THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH by CVP**

BEFORE: **EMPLOYMENT JUDGE MORTON**

BETWEEN:

Ms M Weightman **Claimant**

AND

Supercar Italia Limited **Respondent**

ON: **2 May 2025**

Appearances:

For the Claimant: **Jordan Mir, Lay Representative**
For the Respondent: **Ms S Sheerin, Counsel**

Written reasons provided at the request of the respondent

1. Oral judgment was given at the end of the hearing of this case on 2 May 2025. The respondent made a request for written reasons on 19 May 2025 and these reasons are given in response to that request.

2. By a claim form presented on 25 July 2023 the claimant brought a claim of direct sex discrimination against the Respondent under s 13 Equality Act 2010 ("Equality Act"), which the respondent resisted. ACAS was first contacted on 24 May 2023 and the certificate was issued on 30 June 2023. It was not in dispute that the claim was brought in time.

3. The claim was listed for a preliminary hearing by order of Employment Judge Burge on 4 March 2025. She considered that there were potential grounds for a strike out or deposit order in respect of the claim and there was an issue as to

whether Bromley College (the "College") should be added as a party to the claim.

4. The hearing took place by CVP and I was satisfied that everyone present could see and hear clearly. At the hearing I did not hear evidence, because the point to be decided at the hearing was a legal issue on which EJ Burge had asked the parties to provide written submissions. I asked the parties to take me through their submissions during the hearing.

5. I was provided with a bundle of documents consisting of 80 pages and page references in this judgment are to page numbers in that bundle.

Background

6. The claimant is a student at the College. It was not in dispute that in 2023 the respondent had a full-time apprenticeship vacancy which was to be 4 days' work per week at the respondent with a day at Bromley College. The College's apprenticeship recruitment officer Mason Ward put the claimant forward for the position. The respondent than interviewed her for a voluntary trial, so that both the respondent and the claimant could assess whether the apprenticeship would be suitable for them. As a result of the interview the claimant was offered a two-week trial. The dispute concerns what happened next.

7. Although I have not been required to make and did not make detailed findings of fact, I was shown certain pieces of evidence on which I have placed reliance in deciding whether the claim can proceed in the employment tribunal. I was shown a message at page 77 which the claimant had sent to Mr Ward after the interview. This confirmed that the claimant had been offered a trial and added "He [Mr Hakim of the respondent] told me he would be happy to give me a trial and to contact you, so you can contact him. I also forgot to mention that I have a daughter who I drop off to nursery so I would need to know the shift times (and date) for the trial as I drop my daughter off at 8.30-8.40 at nursery and it takes me 35 minutes to get there, so if you could find out for me when you speak to him I would appreciate that". The claimant maintained in a statement she had prepared (but on which she was not cross examined) that she had not said anything about being available only for limited hours. I did not make any findings of fact about that as it is not necessary for me to do so. The claimant then received an email from Mr Ward on 22 May 2023, after Mr Ward had had contact with the respondent. This email was at page 78. It confirmed that the respondent no longer wished to proceed with a work trial, as they were too concerned about whether the claimant would be able to commit to the required work hours due to childcare and her parental responsibilities.

8. The claimant brought proceedings against the respondent, asserting that she had been discriminated against because of sex. The respondent defended the claim on the basis that Mr Ward had called to relay an issue with the claimant's availability, informing the respondent that the claimant would only be available between 10.00 and 14.00 during the trial, for childcare reasons. (As noted above, the claimant denied saying this to Mr Ward). In its grounds of resistance, the respondent said that these hours were not viable for a pre apprenticeship work placement and would not permit a proper assessment of the role to be

conducted. It also said that it had been concerned that the issue had not come to light sooner. It said that the claimant had confirmed during her interview for the trial that she had in fact been happy with the hours originally offered (08.30-16.30). These statements were consistent with communications that were sent to Mr Ward by the respondent, complaining that an unsuitable candidate had been put forward (page 70-71). By that time those communications were written the claimant had complained about the decision of the respondent to withdraw the placement and the respondent was also concerned about having become the subject of a complaint.

9. The respondent also made an application to join the College as a respondent to the claim.

The issues for the hearing

10. There were potentially three issues for the hearing:

    a. Should the direct discrimination claim be struck out as having no reasonable prospect of success, or alternatively a deposit ordered because it has little reasonable prospect of success? In dealing with this issue, I would be required to take the claimant's claim at its highest.
    b. If the claim were not struck out, should the College be added as a respondent to the claim? The respondent stated at the start of the hearing that it no longer pursued its application to join the College.
    c. Should the claimant be permitted to amend her claim to include a claim of indirect sex discrimination against the respondent (she had confirmed at the case management preliminary hearing that she was bringing a claim of direct sex discrimination only).

11. There was also a fourth issue, that had been referred to in correspondence and in the submissions for the hearing prepared by Ms Shireen. That concerned the jurisdiction of the tribunal to deal with a complaint where the problem appeared not to lie with the way the employment provider (the respondent) had treated the claimant during the course of her doing work for it, but with the way she had been given access to that work by the educational institution involved (the College). As noted in the previous paragraph, the respondent had initially wanted to join the College to the claim, but it was now making a different application, that the College was primarily at fault and the tribunal did not have jurisdiction to deal with any complaint against the College, which would have to be dealt with in the County Court.

The legal framework

12. The case engaged several sections of the Equality Act 2010 as follows:

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

55 Employment service-providers

(1) A person (an "employment service-provider") concerned with the provision of an employment service must not discriminate against a person—

(a) in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;

(b) as to the terms on which the service-provider offers to provide the service to the person;

(c) by not offering to provide the service to the person.

(2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—

(a) as to the terms on which A provides the service to B;

(b) by not providing the service to B;

(c) by terminating the provision of the service to B;

(d) by subjecting B to any other detriment.

56 Interpretation

(1) This section applies for the purposes of section 55.

(2) The provision of an employment service includes—

(a) the provision of vocational training;

(b) the provision of vocational guidance;

(c) making arrangements for the provision of vocational training or vocational guidance;

(d) the provision of a service for finding employment for persons…….

(5) This section does not apply in relation to training or guidance for students of an institution to which section 91 applies in so far as it is training or guidance to which the governing body of the institution has power to afford access.

(6) "Vocational training" means—

(a) training for employment, or

(b) work experience (including work experience the duration of which is not agreed until after it begins).

S91 Students: admission and treatment, etc

(1) The responsible body of an institution to which this section applies must not discriminate against a person—
(a) in the arrangements it makes for deciding who is offered admission as a student;
(b) as to the terms on which it offers to admit the person as a student;
(c) by not admitting the person as a student.
(2) The responsible body of such an institution must not discriminate against a student—
(a)in the way it provides education for the student;
(b)in the way it affords the student access to a benefit, facility or service;
(c)by not providing education for the student;
(d)by not affording the student access to a benefit, facility or service;
(e)by excluding the student;
(f)by subjecting the student to any other detriment.

13. I was also referred to the case of Blackwood v Birmingham and Solihull Mental Health Foundation Trust [2016] ICR 308, in which Ms Blackwood was a university student undertaking a diploma in mental health nursing. The university arranged a vocational placement with the trust. Ms Blackwood attended on the first day and discussed with a manager what shift pattern she would be working. She explained that she would have difficulty working nightshifts and weekends because of her childcare responsibilities. The initial indication was that this would not be a problem but within a few days she was told that the placement was being withdrawn, apparently because the Trust believed that she was not prepared to work nights and that that was incompatible with the requirements of her university course and/or of the Nursing and Midwifery Council. Ms Blackwood brought a claim against the trust under the Equality Act 2010 s.55, complaining that the withdrawal constituted indirect sex discrimination on the part of the trust, which was an employment service provider. She also alleged that the university had aided the trust or that the trust had acted as its agent, but she later withdrew her claim against the university. The employment tribunal held that its jurisdiction was excluded by s.56(5), on the basis that s.56(5) disapplied s.55 in relation to the training of university students where the university had "power to afford access" to the training. The Employment Appeal Tribunal upheld that decision, holding that any claim should have been brought in the county court.

14. Ms Blackwood appealed to the Court of Appeal, which overturned the decision of the tribunal and the EAT, holding that s56(5) did not oust altogether the possibility of a claim against the provider of a work placement. The Court of Appeal's decision was complex, but its conclusions were helpfully summarised at paragraph 61 of its decision as follows (my emphasis):

61. It may be helpful after so lengthy a discussion if I summarise what I believe to be the effect of sections 55 and 56, construed so as to give effect to the relevant Directives. The starting-point in any case is to identify the nature of the student's

complaint – that is, whether it is about discriminatory access to a work placement or about discrimination occurring during the placement.
(1) If the claim is about access – either that the university has failed to provide a placement at all or that it has done so in a discriminatory way – it can only be brought under section 91, and thus in the County Court. The primary claim will inevitably be against the university, because it is the university that has the responsibility for the provision of access, and it is hard therefore to see any role for sections 109 and 110; but if the provider has induced or aided that contravention it will be secondarily liable under section 111 or 112 and the student can proceed against it (in the County Court) as well as, or instead of, the university.
(2) If the claim is about discrimination by the provider in the course of the work placement, the provider will typically have done the act complained of as a principal and will thus be primarily liable for that discrimination under section 55, with the forum for any proceedings being the Employment Tribunal. There may be untypical cases where the act was done by the provider as the agent of the university. In those cases both the university and the provider will be liable, by virtue of sections 109 (2) and 110 (1) respectively, but the liability will still arise under section 55, so that the ET will still be the correct forum whether the claimant chooses to proceed against only one of them or against both. The university may of course also in a particular case be liable, depending on the facts, under sections 111 or 112 as having induced or assisted the discrimination. Any such claim will, again, have to be brought in the ET: see sections 114 (1) (e) and 120 (1) (b).

Discussion

15. The hearing began with the respondent's submissions to which the claimant replied, both parties having prepared written submissions before the hearing. The respondent submitted that the communications from Mr Ward to both the claimant and the respondent had been inaccurate and misleading. He had told the respondent in a phone call just before the work trial was due to start that the claimant could only work between 10.00 and 2.00 each day, but in relaying the respondent's withdrawal of the offer at page 78 he did not tell the claimant he had said that. He had also, the respondent submitted, misrepresented in that message the respondent's reasons for withdrawing the placement, which the respondent maintained related to her limited availability and not to any childcare requirements.

16. The respondent also submitted that there were problems with the merits of the direct discrimination claim, which it submitted would have no reasonable prospect of success because the same decision would have been made in relation to a man whose hours were similarly limited. Moreover, the placement had been offered to the claimant, a woman, a fact difficult to reconcile with it having been withdrawn because she was a woman.

17. The respondent also made submissions on the claimant's application to amend her claim to add a claim of indirect discrimination, which she had made at the hearing, basing it in part on the position noted in Dobson v North Cumbria Integrated Care NHS Foundation Trust [202] IRLR 79 that women are statistically more likely to have childcare responsibilities and that accordingly a decision to withdraw a placement because of concerns about such responsibilities would be indirectly discriminatory. The respondent's first submission on this was that the application was made too late in the proceedings, having been made on the

morning of the hearing itself. But it also made submissions on the merits of the new claim. Assuming that the provision, criterion or practice ("PCP") in question was a requirement to work from 8.30 to 4.30 each day, the respondent submitted that it was not clear that the claimant would have been at a disadvantage as her case appeared to be that she had not said that she was unavailable during those hours. It was also unclear if and how the PCP was ever in fact applied to the claimant, so the whole basis of the amendment application did not have a clear basis in the facts as they appear to have happened. The respondent also submitted that it could have advanced a defence of objective justification. My decision on the amendment application is set out later in these reasons.

18. Turning to the issue about the tribunal's jurisdiction, I reproduce here the submissions made by Ms Shireen, which she also addressed orally at the hearing. The claimant did her best to respond to this complex argument but the point is a very difficult and detailed one for a lay person to understand and deal with. However as it concerned the tribunal's power to hear the claim at all it was essential that I listen to and apply the legal principles involved. Ms Shireen said this:

17. The case of Blackwood v Birmingham & Solihull Mental Health NHS Foundation Trust [2016] EWCA Civ 607 is authority for the following principles:
a. Where a student's claim for discrimination relates to access to an educational work placement, that claim is properly brought under s.91, EqA 2010 against the education institution in the County Court [61]. This is because it is a claim for 'discrimination in education' under Part 6, EqA 2010 and is subject to the jurisdiction of the County Court (s.114(1)(c), EqA 2010).
b. Where a student has a claim for discrimination relating to treatment by the provider during an educational work placement, that claim is to be brought under s.55, EqA 2010, against the provider of the placement in the Employment Tribunal [61]. This is because it is a claim for 'discrimination at work' under Part 5, EqA 2010 and is subject to the jurisdiction of the Tribunal.
c. A student cannot bring a claim for discrimination under s.55 against the provider of a work placement if the exception under s.56(5) applies. This exception applies to training to which an education institution has afforded students access [44].
d. The effect of s.56(5) is therefore that, where a student is entitled to bring a claim for discrimination relating to access to an educational work placement against the education institution under s.91, a claim under s.55 against the provider of the placement will not be available [50-51].
18. R concedes that the effect of Blackwood is that students who have a claim for discrimination against their education institution cannot bring that claim in the Tribunal but must issue in the County Court.
19. R abandons the application to add the College as a respondent in these proceedings, as the issues between C and the College do not fall within the jurisdiction of the Tribunal (r.35, ETR 2024).
20. But, on the principles in Blackwood, R further invites the Tribunal to strike out the Claim as it has been wrongly brought under s.55 against R in the Employment Tribunal.
21. The Claim relates to discrimination in accessing a placement to which the College had the power to afford access. The College misrepresented C's availability to attend the placement, seemingly on the assumption that she would be limited by childcare responsibilities.
22. R therefore submits that C is entitled to bring a claim for discrimination in the provision of access to that placement against the College under s.91. The exception under s.56(5) therefore applies, and no claim is available to C in employment proceedings under s.55. R therefore invites the Tribunal to strike out the Claim on this further ground.

19. In fact I do not think that this submission quite correctly states what the Court of Appeal decided in Blackwood. The Court did not say that once s56(5) applies, s55 is wholly excluded in relation to the placement provider (in this case the respondent). That was the conclusion reached by the Tribunal and the EAT, which the Court of Appeal overturned. What the Court of Appeal decided was that it is first necessary to decide whether the claim is about access to a work placement or whether it is about the way the work placement was provided, that is something that was done during the course of the work placement itself. That might in fact have been the explanation that Ms Shireen intended, but if she was suggesting that no claim could have been brought against the respondent simply because there was a potential claim against the College, I do not think that is the effect of the Court of Appeal's judgment. It might in practice be possible for discrimination to have been perpetrated by both the education institution and the provider of the work experience and the Court of Appeal acknowledged that this could entail a student having to bring two sets of proceedings – one in the county court under s91 Equality Act and one in the employment tribunal under s 55. The Court of Appeal also referred to ways in which an education institution might be liable in proceedings brought against the work placement provider and vice versa, for example by means of one of them acting as agent for the other (s109 and 110 Equality Act) or by reason of one of them inducing or aiding discrimination by the other (s111 and 112 Equality Act). In each case the place where the proceedings would need to be brought would depend on which organisation had the primary liability. If it is the education provider, the claim has to be brought in the county court and if it is the work placement provider the claim is brought in the employment tribunal.

Decision

20. I find firstly that the employment tribunal does not have jurisdiction to hear this claim. The real issue here is about what happened when access to the work placement was being organised. It is about what Mr Mason did, what he said to each side in the dispute and what happened as a consequence of that. It is not a complaint about what the respondent did whilst the claimant was working for it. I have reflected on this point carefully because in the claimant's mind this is a claim about something she believes the respondent did. But even taking the Claimant's case at its highest, it is my judgment that the case falls squarely within the reasoning in Blackwood – the primary claim here is against the College in relation to things that happened when the work placement was being organised. Accordingly, the claim must be brought against the College in the county court and the claimant cannot therefore seek a remedy in the employment tribunal against the respondent. There is a marked similarity in the facts of the claimant's case with the facts in Blackwood but also a material difference in that the claimant in this case never got as far as starting work with the respondent, whilst the claimant in Blackwood, had actually started work with the Trust and there was a withdrawal of the placement after the work had begun. This enabled the claimant in Blackwood to bring a claim in the employment tribunal against the NHS Trust that withdrew the placement.

21. The claimant is not in that position. Everything that she complains about happened before she even began the pre-placement work trial. In my judgement

she is therefore complaining about the way in which she was afforded access to the work placement, and not the way in which the work placement was carried out. This means that s56(5) Equality Act operates to exclude a claim in the employment tribunal against the respondent.

22. This does not mean that the respondent could not be involved in the county court proceedings – it is clear from the Court of Appeal judgment in Blackwood and from the Equality Act itself that that possibility remains open. The respondent could therefore in theory be included in a claim as an agent of the College or because it had induced or aided the College in an act of discrimination. That would of course depend on the merits of the claimant's claims and her ability to establish facts that showed that the respondent had done something discriminatory for which the College was liable as its principal, or that the respondent had induced or aided the College to do something discriminatory.

23. In terms of the merits of her claims brought to the tribunal, the claimant claims that the respondent decided to withdraw an offer of a pre-apprenticeship placement when it learned that she had childcare responsibilities. Her initial claim to the tribunal was that this involved an act of direct discrimination. She has now asked to amend her claim to allege indirect discrimination. The claimant faces a number of difficulties. I agree with the respondent's submissions that even if the tribunal had had jurisdiction to deal with a claim against the respondent, which for reasons given above I find that it does not, the direct discrimination claim would not have had any reasonable prospect of succeeding. This is because the respondent knew of the claimant's sex when it interviewed and offered the placement, indicating that sex was not playing a part in its decision making. Secondly, the reason it gave for withdrawing the placement was not the claimant's sex, but its belief that she had very limited availability during the working day. It is very likely that it would have applied the same reasoning to both male and female candidates and accordingly there was no less favourable treatment of her because she was a woman. The direct discrimination claim would therefore be bound to fail.

24. If I were to allow the amendment application and let the claimant put her claim forward as one of indirect discrimination, there are still some problems in that it is not clear that the PCP was ever actually applied to the claimant or that she was actually put at a disadvantage by it. But taking the claimant's case at its highest, it may be on the other hand that the respondent had said to the College that the claimant's childcare commitments were likely to prove an obstacle to her performing the contract (which is denied by the respondent but is what the claimant understood the position to be following the email communication from Mr Ward informing her that the placement had been withdrawn). It might therefore have been possible to identify the PCP as something the respondent did do, such as having a policy of not offering placements to individuals with childcare commitments. If there had not been the jurisdiction problem in this case, I would have allowed the amendment on the basis that the balance of prejudice pointed to allowing the facts underlying the indirect discrimination claim to be fully explored, with more detailed scrutiny of the actions of both the College and the respondent. I agree that the application was made very late, but in my view that would not have been enough to refuse the application.

25. However as discussed above, the real difficulty is ss55 and 56 Equality Act. It is clear to me following Blackwood, that the claimant's complaint has to be brought against the College in the county court, where she would need to explain how it was that the College had breached the Equality Act. This means that the tribunal does not have the power to deal with the claim and allowing the amendment would therefore be fruitless.

26. It is suggested by the respondent that the College was careless in the way it communicated between the parties. If the claimant decides to take matters further, she will need to consider if and how what happened could amount to discrimination under any of the provisions of the Equality Act, taking into account the comments I have made about the merits of her claims. If it is her case that the respondent did things that amounted to discrimination – that the College was in effect a conduit for a discriminatory decision – then there is potential for the respondent to be liable under s110, 111 or 112 Equality Act, but the same points about the merits apply. But none of that can be dealt with any further in the employment tribunal and I must unfortunately therefore strike out the claim for want of jurisdiction.

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Employment Judge Morton
Date: 31 July 2025