Neutral Citation Number: [2025] EAT 191

Case No: EA-2023-000554-LA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date:19 December 2025

Before:

HIS HONOUR JUDGE AUERBACH

- -

Between:

MR T TURNER

Appellant

- and –

WESTERN MORTGAGE SERVICES LTD

Respondent

- -
- -

The **Appellant** in person
Michael White (instructed by Capita) for the **Respondent**

Preliminary Hearing
Hearing date: 28 October 2025

- -

JUDGMENT

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The factual background to this decision, which is not disputed as such, is as follows.

2. The claimant in the employment tribunal was for some years employed by the respondent's predecessors, and then the respondent itself, as a mortgage adviser.

3. On 16 March 2021, at a time when he was still employed by the respondent, the claimant began an employment tribunal claim which was given case number 1300842/2021. In summary, the background was that, owing to ill health resulting in lengthy sickness absence, the claimant had for some time been in receipt of payments under a Permanent Health Insurance (PHI) scheme. He had been notified that those payments would be ending in May 2021; but he considered that he was entitled to continue to receive payments under the scheme for a further six months, and that employer's pension contributions should also continue for the same further six-month period.

4. At a preliminary hearing in that first claim in February 2022 a judge identified potential issues as to whether the tribunal had jurisdiction to entertain that claim, or parts of it, but allowed the claimant a further opportunity to advance a case on those points. Subsequently the claimant withdrew the first claim and a judgment was then sent, dismissing it upon withdrawal, on 5 April 2022.

5. On 4 May 2022 the claimant presented a fresh claim form to the employment tribunal. It was given case number 1302182/2022. In that second tribunal claim the claimant once again identified that he was claiming in respect of six months' worth of payments under the PHI scheme and in respect of employer's pension contributions. The claimant also referred to being disabled and to having requested a reasonable adjustment. He stated that he had resigned on 10 March 2022.

6. The respondent entered a response to the second claim, in which it applied for the complaints brought by it relating to the PHI and pension payments to be struck out on the basis that they were

res judicata. It did not admit disabled status, denied discriminating and raised a time point.

7. Arising from a hearing on 24 March 2023 EJ Noons issued a judgment in the second claim in the following terms:

> **"It is the decision of the Employment Tribunal that:**
>
> **1 The claimant's claim in relation to non-payment under the respondent's PHI scheme is struck out.**
>
> **2 The claimant's claim for non-payment of employer pension contributions is not struck out."**

8. The written judgment was sent to the parties on 30 March 2023. Written reasons were sent on 25 April 2023. They set out that the complaint in respect of payments under the PHI scheme had been struck out on the basis that issue estoppel applied to it; but the complaint in respect of pension contribution payments had not been struck out. The reasons also identified that there was a complaint of disability discrimination, which had not been the subject of the strike-out application at all.

9. On 4 April 2023 the claimant instituted an appeal. The notice of appeal identified that it was from the judgment in case 1302182/2022 that: "The claimant's claim in relation to non-payment under the respondent's PHI scheme is struck out", arising from the hearing on 24 March 2023. On 19 June 2023 the EAT wrote an initial letter to the claimant and to the respondent's solicitors, giving an appeal case number, and indicating what the next steps in relation to the appeal would be.

10. Following communications between the parties and ACAS, on 6 July 2023 ACAS wrote to the parties. The letter attached a form COT3. The letter identified in boxes at the top: "Case number 130218/2022" and the names and addresses of the parties. It began with these words:

> **"Now that the terms of the settlement have been agreed, I am in a position to issue the COT3 form which confirms that an agreement has been reached in this case."**

11. The document gave the parties instructions for signing and sending copies of the COT3 to one another. It also gave information about the consequences of non-payment of the settlement sum.

12. The COT3 form was headed: "Agreement in respect of an Actual or Potential Claim to the Employment Tribunal." Beneath that was a box which contained the names and addresses of the parties and the case number. Underneath the box was written: "Settlement reached on 06 July 2023 as a result of conciliation action." The first three numbered clauses of the text read:

> **"We the undersigned have agreed:**
>
> **1 The Claimant agrees to withdraw his employment tribunal claim number 1302182/22 "the claims" within 24 hours of this Agreement being reached between the parties.**
>
> **2 Without admission of liability, in consideration of Clause 1 of this Agreement and in full and final settlement of any and all claims which the Claimant has or may have against the Respondent or an Associated Company (but excluding claims for accrued pension rights and latent personal injury of which the Claimant could not reasonably be aware by the date of which this Agreement is signed) the Respondent will pay the net Settlement Sum of £18,500.00 to the Claimant. It is the parties' understanding that the Settlement Sum is payable free of tax. However the Respondent gives no warranty to this effect.**
>
> **3 Payment of the Settlement Sum will made to the Claimant's bank account by 31st July 2023."**

13. Numbered clauses 4 and 5 contained confidentiality provisions, and clause 6 set out a number of things which the Agreement did *not* prevent the claimant from disclosing, raising or reporting.

14. The COT3 was signed by the claimant on 10 July and for the respondent on 17 July 2023.

15. On 8 August 2023 the employment tribunal sent the parties a judgment of the Legal Officer in the following terms:

> **"The claims, having been withdrawn by the claimant, stand dismissed under Rule 52 of the Rules contained in Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013."**

16. There was, at the time, no communication to the EAT, from either of the parties, or from the employment tribunal, notifying it of the COT3 agreement or the dismissal upon withdrawal.

17. The notice of appeal was referred for a judge to consider whether it raised any arguable grounds that should be considered at a full appeal hearing. On 12 September 2023 the EAT sealed and sent the parties an order of Judge Stout dated 23 August 2023, directing that the appeal be set

down for a full hearing for the reasons attached, and giving other directions. Those included a requirement for the respondent to lodge an Answer within 28 days of the seal date of that order.

18. No Answer having been received, the EAT sent the respondent's solicitors a chasing letter on 18 October 2023. The respondent had in fact changed representatives. Its new representatives, Capita, emailed the EAT that day, copying in the claimant, notifying it of that change, and continuing:

> **"The parties have reached a binding, full and final settlement via Acas as a result of which his appeal should no longer proceed.**
>
> **I am copying the Claimant with a request that he now confirms the position to the EAT.**
>
> **Can you please let me know whether the EAT wishes to see a copy of the COT3?"**

19. The EAT sought the claimant's response. In a letter of 6 November he wrote that it was his intention that the appeal "be continued". He noted that he had appealed in respect of the part of his claim that was struck out. He referred to 11, 12 and 13 September 2023 having been set for the other parts of his claim to be heard by the tribunal. A three-day hearing would have caused him problems, because of "my chronic illness and disability". So he had indicated in further correspondence his interest in judicial mediation; but the respondent indicated that it was not interested in that. The claimant had then contacted ACAS in June 2023 "and asked them to mediate with the Respondents."

20. The claimant's letter continued:

> **"The decision by Judge Noons to strike out part of my claim, meant that the claim was not as I had originally submitted, and whilst my appeal against her decision was still ongoing at the time, all negotiations were on a reduced claim. I felt that this was detrimental to mediation as it was on a reduced settlement from the original claim.**
>
> **I received a letter dated 12 September 2023 from the EAT, which informed me that Judge Stout in Chambers had upheld my appeal, and that it was allowed to proceed to full hearing.**
>
> **I respectfully request that the hearing be allowed to go ahead, as submitted in my reasons stated above."**

21. The EAT sought the respondent's comments. On 19 February 2024 Capita wrote:

> **"The Respondent invites the EAT to make an order to dispose of the appeal without a hearing on the basis that the EAT has no jurisdiction to hear the appeal as the jurisdiction has been excluded by the terms of the Acas COT3 agreement which has previously been provided to the**

EAT but is herewith attached again for ease."

22. On 26 April 2024 the EAT wrote to the claimant at the direction of HHJ James Tayler:

> **"Please state on what basis you argue that you are able to pursue this appeal when you entered a compromise agreement. When Judge Stout permitted the appeal to proceed, she was unaware of this compromise agreement. You may wish to obtain independent legal advice about this matter."**

23. On 8 May 2024 the claimant replied, referring to his letter of 6 November 2023. He continued:

> "**I reiterate that I only signed the COT 3, after part of my claim had been dismissed, and therefore could not be heard, Also the stress of my disability was causing a great deal of unnecessary distress, especially in the way in which the Respondents had acted.**
>
> **The outstanding claim which has been allowed to proceed, covers 6 months of pay which was not paid, and for which I have evidence from the Respondents to say that it should have."**

24. On 14 May 2024 there was a rejoinder from Capita:

> **"With respect, I am finding it somewhat difficult to understand why this matter has been going around in endless circles.**
>
> **It is clear from the COT3 agreement (a copy of which is attached again for ease) that the entire claim number 1302182/2022 has been settled. Furthermore, and for the avoidance of doubt, the COT3 contains a full and final settlement waiver according to which the Appellant has agreed a "full and final settlement of any and all claims which has or may have against the Respondent" (see clause 2 of the COT3).**
>
> **As a result, it is the Respondent's view that the appeal cannot proceed."**

25. Thereafter the matter was referred to me. I directed a Preliminary Hearing (PH) to determine the effect of the COT3 agreement on this appeal; and whether it should be dismissed or proceed to a full hearing. That PH came before me on 28 October 2025. The claimant represented himself. He has CFS/ME, and at his request the hearing was conducted remotely. The respondent was represented by Mr White of counsel. I had the benefit of skeleton and oral arguments. I reserved my decision.

Discussion and Conclusions

26. The starting point is that the COT3 agreement was a binding contract reached between the parties following an ACAS Conciliation Officer having taken action. The claimant has referred to the fact that he was a litigant in person, to his ill health or disability, and to the anxiety or stress under

which he says he was labouring at the time. However, he confirmed during the course of argument before me, that he does not contend that these circumstances were such that the COT3 agreement should not be treated as a contract that is binding upon him, as such. Nor do I consider that the information or evidence put before me painted a picture of him having been under the sort of extreme duress that might, in law, vitiate an apparent contract.

27. The claimant refers to the fact that Judge Stout considered his appeal in respect of the strike-out decision to be arguable, and directed that it be considered at a full appeal hearing. However, it is clear that Judge Stout was not aware of the existence of the COT3 agreement; and she did not consider what impact that agreement might have on the appeal. That is what I now have to decide.

28. How should I approach that task? I agree with Mr White's submission that a COT3 agreement is, in principle, to be interpreted like any other contract, by applying the usual established principles of contractual interpretation. He cited Lord Bingham of Cornhill in **Bank of Credit and Commerce International SA v Ali** [2001] UKHL 8; [2002] 1 AC 251 at [8] (the **BCCI** case):

> **"In construing this provision, as any other contractual provision, the object of the court is to give effect to what the contracting parties intended. To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified."**

29. Mr White referred also to **Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd** [2023] UKSC 2; [2023] 1 WLR 575, where, at [29], referring to earlier authority, the pertinent principles of interpretation were summarised by Lord Hamblen (for the majority) in this way:

> **"(1) The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean.**
>
> **(2) The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning.**
>
> **(3) Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications**

and consequences are investigated."

30. It is important to note, therefore, that, as the authorities explain, the question is one of *objective* interpretation of the words used in the document itself. The enquiry is not into the *subjective* states of mind of either of the parties. What the claimant said, in his correspondence with the EAT, and in argument before me, that he, in his mind, subjectively believed would by the effect of the COT3 agreement, at the time, does not have a bearing on the *objective* interpretation of the words of the document itself. Similarly, what either of the parties may have thought about why they were each content to settle on the basis of the particular amount of the Settlement Sum for which the COT3 agreement provided (about which submissions were made to me on both sides) is not to the point. A different point, however, is that, as the authorities discuss, the words of the agreement must be construed in light of the relevant context and shared background knowledge of the parties, at the time.

31. Before I turn to the arguments about the interpretation of the words of the COT3 agreement, I should note a point about terminology. In this decision, I use the word "claim" to refer to the whole of the claim presented to the employment tribunal in a given claim form. I use "complaint" to refer to a particular legal complaint raised within a given claim, invoking a particular cause of action in respect of a particular matter. So, in this case, the second tribunal *claim* raised three *complaints*. One of those complaints was then struck out, and was then the subject of the appeal to the EAT. However, in places in the employment tribunals' rules of procedure, and often in tribunal decisions or parties' communications, or in other documents, relating to tribunal, or indeed other, litigation, the words "claim" or "claims" are used to refer to what I would call a "complaint" or "complaints".

32. The principal arguments in support of the claimant's interpretation of the agreement can be summarised in this way. First, it referred in clause 1 to "the claims" (that is, the complaints) in tribunal claim number 1302182/22. When the agreement was reached, the live complaints in that claim did not include the complaint that had been struck out. Secondly, the COT3 made no express

reference to the ongoing appeal proceedings in the EAT. Both parties were aware of the appeal at the time. If the parties had wanted the settlement to embrace the ongoing appeal proceedings, as well as the ongoing complaints in the employment tribunal, the COT3 wording could, and should, have referred to the EAT proceedings as well. The fact that it did not do so indicates that the parties did not intend the settlement to embrace the appeal proceedings, or the complaint to which they relate.

33. For the respondent, the principal arguments are, in summary, as follows.

34. First, by clause 1 of the COT3 the claimant agreed to withdraw the whole of "claim number 1302182/22". It referred also to "the claims" under that claim number. This meant *all* of the complaints that had been raised under that claim number. The EAT proceedings were not independent of the employment tribunal proceedings, but a by-product of them. The complaint which had been struck out, and was the subject of the ongoing appeal, was part of the tribunal claim under that number. The wording of clause 1 therefore embraced that complaint, and the appeal relating to it.

35. Further, Mr White relied upon a number of features of clause 2. First, the settlement embraced "any and all" claims (that is, in my language, complaints) which the claimant "has or may have" against the respondent (or an associated company). That wording was, on its face, deliberately wide, and not limited to complaints that had specifically been raised as part of claim 1302182/22. Further, if the complaint which had been struck out, and was the subject, at the time, of the appeal, was not, at that moment, a complaint which the claimant "has", it was, at least, one which he "may have", depending on what might be the outcome of the appeal (had the COT3 not been agreed).

36. Secondly, the reference to a "full and final settlement", but then excluding only limited and specified claims (complaints), signified that, with *only* those limited exceptions, the parties had agreed that, in exchange for the respondent agreeing to pay the Settlement Sum, there would be a "clean break" end to *any and all* litigation by the claimant. That was reinforced by the fact that the

exclusions were themselves narrow, being confined to two specific matters, which were themselves circumscribed: one relating to pension rights that had accrued, and the other, concerning personal injury claims, only extending to such claims of which the claimant "could not reasonably be aware".

37. Mr White noted that in the **BCCI** case the COT3 included a broadly-worded "full and final settlement" clause (as set out by Lord Bingham at [3]). But this was held not to embrace a claim for damages arising from a head of loss (so-called "stigma damages") of which, at the time of the COT3, the claimant in that case was not aware, and could not reasonably have been aware. In the present case, by contrast, the claimant was, at the time, aware of the appeal, and the complaint to which it related. It would be inconsistent with the "clean break" language, and the narrow scope of the express exclusions, to treat *that* complaint, and the appeal relating to it, as *impliedly* excluded from the compromise as well. Given that clause 2 specifically identified *other* excluded matters, had the parties intended to exclude anything else, one would have expected the document expressly to say so.

38. Mr White contended that the settlement of a complaint or claim should be construed as inherently extending to the settlement of an appeal relating to that complaint, or deriving from that claim. But, he argued, even if that was not right, and the settlement of the *complaint* did not itself settle the *appeal* relating to it, the appeal proceedings would nevertheless be entirely academic, as no purpose would be served by the EAT adjudicating an appeal in respect of a complaint arising from a claim, both of which had now been compromised, and therefore could not in any event be revived.

39. My conclusions follow.

40. First, clause 1 of the COT3 agreement comes first, because it forms a condition for the payment of the Settlement Sum which the respondent agrees to pay by clause 2. That is conveyed by the fact that the respondent's obligation to pay that Settlement Sum is expressed to be "in consideration" (in part) of clause 1. Clause 1 does not itself deal exhaustively with the scope of the

overall agreement and what is, in substance being settled. It is clause 2 which sets out what the coverage of the overall bargain, or the overall "consideration" flowing between the parties, is. The obligation on the respondent to pay the Settlement Sum is in consideration of clause 1 *and* "in full and final settlement …" of the matters referred to in the remainder of the first sentence of clause 2.

41. Those opening words of clause 2 make clear that, in principle, what the respondent will get, in exchange for the payment of the Settlement Sum, is not just the withdrawal of the "claims" in tribunal claim number 1302182/22 (which also had to be done first), but a "full and final settlement" of *any* claims which the claimant *has or may have* against the respondent, subject only to what is specifically excluded from that, by the words that follow. It might be said that the reference in clause 1 to the "claims" in the tribunal claim, which the claimant was specifically obliged to *withdraw*, was ambiguous as to whether that included a complaint which had been struck out. But, even if so, the scope of the "full and final" settlement of "any and all claims" which the claimant "has and or may have", in clause 2 was wider. In principle, this wide wording, in its ordinary meaning, embraced the complaint which had been struck out, and was the subject of the then ongoing appeal.

42. I also consider that, because of the width of those opening words of clause 2, and because there followed a specific provision for certain exclusions, the objective overall sense is that everything that is covered by those wide words is settled, unless it is specifically excluded by the words that follow. The overall sense is that the question of what should be excluded has been considered and expressly addressed, and that this wide-ranging settlement is what the respondent gets in exchange for the Settlement Sum, and the Settlement Sum is what the claimant gets in exchange for that (with limited specified exceptions) clean break in respect of "any and all claims" by him.

43. The natural objective reading is, therefore, that, if the parties had intended that the settlement by this agreement should leave as a piece of unfinished business, the possibility that the appeal relating to the complaint concerning payments under the PHI scheme could continue, and, if

successful, lead to that complaint being reinstated and then further pursued in the tribunal, then they would have included an express provision making clear that this was excluded from the scope of the full and final settlement for which the opening words of clause 2, as a starting point, provided.

44. Where, as I have concluded in this case, the words of a settlement agreement, objectively construed, compromise a complaint which has been struck out, the natural and logical implication is that they also compromise a related appeal, which is part of the ongoing litigation by which a party has sought to be enabled, after all, to continue to pursue that same complaint in the tribunal.

45. But even if that is not, doctrinally, the right analysis, the COT3 settlement certainly renders the appeal wholly academic, because, once the complaint, and the claim in which it was raised, have been compromised, the appeal cannot lead to it being reinstated or substantively adjudicated. The EAT will not, as a general rule, entertain an appeal which is purely academic. I also agree with Mr White, that, where the appeal has become academic, because the claim, and the complaint to which it relates, have, since the appeal was begun, been the subject of a binding full and final settlement, the interests of finality in litigation mean that a very compelling reason would be needed for it to be justified for the appeal nevertheless to proceed any further to a full hearing. There is no good or sufficient reason that has been advanced, or that I can see, to do so in this case.

Outcome

46. For all of these reasons, I conclude that the effect of the COT3 agreement is that this appeal must now be dismissed, and I will issue an order to that effect.