EMPLOYMENT TRIBUNALS

Claimant: Mrs A Glenn
Respondent: Lakeside Healthcare

Heard at: Reading Employment Tribunal (in person at the hearing centre)

On: 9 October 2025
Before: Employment Judge George

Representation
Claimant: self-representing
Respondent: Ms C Jennings (counsel)

JUDGMENT

1. The parties reached a binding settlement of the claim on 13 December 2024 under the auspices of ACAS by way of a COT3 Agreement.

2. The claim has been compromised.

REASONS

1. This preliminary hearing in public was scheduled to take place over the course of a day by Employment Judge Reindorf KC at a preliminary hearing she conducted on 24 March 2025. I have had the benefit of the following documents:

   a. A hearing bundle running to 165 pages.

   b. The claimant's opening note.

   c. The respondent's opening note.

   d. I was provided separately with the COT3 agreement that the respondents rely on and the claimant says is not binding.

   e. A copy of the case management orders of Judge Reindorf KC from 24 March 2025.

   f. I was also provided with a 17-page PDF bundle of correspondence that the claimant particularly wanted me to look at although Ms Jennings said it was found elsewhere in the hearing bundle.

g. I was provided with a photograph which I'm told is relevant to the claimant's substantive whistleblowing claim but was not relevant for the purposes of today's hearing.

2. The hearing bundle contained three statements prepared in support of the claimant's argument that there was no binding settlement of the claim. There was a statement from herself, one of her husband, Mr P Glenn, and one from Mr Derek Robinson, who had been talking to ACAS on her behalf.

3. At the start of the hearing Ms Jennings confirmed that she did not have any questions on the statements of either Mr or Mrs Glenn. Therefore, they did not give oral evidence and the statements they provided, insofar as they are relevant to today's issues, are admitted into evidence unchallenged.

4. Ms Jennings did have questions that she would have liked to put to Mr Robinson but he was not present. His statement was admitted nevertheless but given less weight because he was not present to answer questions upon it.

5. The issue that I was directed to consider was whether the parties reached a binding settlement of the claim. This required me to consider whether the contractual test for a legal agreement was satisfied by facts that I find about the relevant events. It is clear from the case of Gilbert v Kembridge Fibres Ltd [1984] ICR 188, EAT, that the contractual test applies and that a compromise agreement can be made either in writing or orally. That case considered in detail the function of the ACAS conciliator. I particularly take into account a passage at page 191D to 192A. Towards the end of that passage, it is explained that the function of the conciliation officer is

> "to put proposals from one side to the other side, if such proposals as put by one side are orally accepted by the other, Acas at the present time regards them as creating a binding agreement without any requirement for the document to COT3.

The EAT in that case also said:

> "There is therefore, as far as we can see, no practical need to treat a conciliator officer performing his statutory duty any differently from any other person who is an intermediary between two parties with the result that offers and acceptances can be communicated through the conciliation officer. If one reaches that point a contract can be concluded between the two parties via the conciliation officer. There is no formal requirement for such agreement to be in writing."

6. The question in the present case, therefore, is whether an offer and an acceptance have been communicated through the conciliation officer. The essential conditions of a contract of any kind is that there must be an agreement between two or more parties (usually through offer and acceptance) with the intention of creating legal relations and something of benefit must pass from each of the parties to the other (technically referred to as consideration). In the present case, if there was offer and acceptance, the claimant was giving up her claim for money or money's worth which would satisfy the requirement for consideration.

It is necessary for the settlement of a claim in the employment tribunal for this process to be conducted through the ACAS conciliation officer in order to fulfil the requirements for contracting out under section 203 Employment Rights Act 1996 (the ERA) or section 144 Equality Act 2010 (the EQA).

7. The respondent says that Mr Robinson was acting as the agent for the claimant in the negotiations, in communicating her acceptance and therefore in concluding the agreement. An important issues is whether Mr Robinson was acting as the claimant's agent. The respondent relies on the doctrine of ostensible authority. This provides that, whether or not an individual is acting within their actual authority as agent, the principal (here Mrs Glenn) is bound by their actions if they are acting within the scope of their ostensible authority.

8. The test for ostensible agency in the context of settlement in the Employment Tribunal is set out in paragraph 18 of Gloystarne & Co Ltd v Martin (EAT/1008/00),

> "Putting the point alphabetically, B does not become A's agent in dealings with C, nor does B acquire authority from A to act on A's behalf in relation to C by way only of what B says to C. If that was the case, principals could have agents completely unknown to them and over which they had no control. Rather the case is that B becomes A's agent in dealings with C by reason, in general, of what A says to C on the point or whether A conducts himself to C in some way that reflects on the possibility of B's agency."

9. Here, A is Mrs Glenn, B is Mr Robinson and C is Mr Jenkins, the ACAS conciliator through whom negotiations were relayed to the respondent. The factual question is, therefore, did the claimant hold Mr Robinson out as authorised to act on her behalf to in negotiations to compromise the claim.

10. Another relevant authority is the case of Freeman v Sovereign Chicken Ltd [1991] ICR 853 EAT. In that case, the claimant had nominated a CAB advisor their agent by naming them as their representative in the claim form. The Tribunal had to decide whether the claimant was bound by an agreement reached by that CAB advisor when their position was that they had not in fact authorised the agreement. It was held that, because the individual CAB advisor was nominated on the claim form as the representative that meant that they had ostensible authority to act on behalf of the claimant including in agreeing a settlement.

11. Mrs Glenn relies on Giwa v JHFX Ltd & ors [2025] EWCA Civ 961 paragraph 92 which deals with what amounts to ostensible authority.

> "It is of course true that ostensible authority requires a representation not just by the putative agent (you cannot confer authority on yourself) but by the putative principal, but, as explained by Diplock LJ in his classic exposition of the principle in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] QB 480 at 503 , the commonest form of representation by the principal is by conduct, that is:

"by permitting the agent to act in some way in the conduct of the principal's business with other persons""

12. That does not, in my view, say anything substantially different about the test of ostensible authority to paragraph 18 of Gloystarne & Co Ltd v Martin (EAT/1008/00). The claimant argues that there were limits to ostensible authority. The factual question is, what did the claimant herself do to communicate that the representative had authority and were there limits to that authority.

13. The claimant also argues that there was ambiguity in the discussions; she argues that to mean that there was insufficient certainly about what was discussed such that there was no mutual intention to enter into legal relations. She relies upon Mr Robinson's own evidence that he did not enter into agreement. That is disputed by the respondent and is a factual issue I need to resolve. If Mr Robinson had ostensible authority to conclude a settlement, if he did enter into an agreement and if it satisfies the requirements of certainty for it to be a contract then I need to go on to consider whether the COT3 should be set aside. The claimant argues that ACAS exerted pressure to the point of undue pressure which means that any settlement should be set aside.

14. Ms Jennings has, in her opening note, referred to Moore v Duport Furniture Products Ltd [1982] ICR 84, HL and Slack v Greenahm (Plant Hire) Ltd [1983] ICR 617 EAT. The latter states that extremely cogent evidence is needed of alleged pressure by the conciliator or that the conciliator acted in bad faith. The Moore decision states that it is not the case that the terms must be just and equitable in order to be enforceable and it is not the ACAS conciliator's duty to ensure that that the settlement is just and equitable.

15. These are my findings about the relevant chronology. I do not set out every detail from the documents, only my findings necessary to reach conclusions on the questions I have to decide.

    a. The claimant initially contacted ACAS to start early conciliation before issue of the proceedings on 26 March 2024.

    b. She resigned from her employment as a Health and Wellbeing Coach on 1 May 2024. The following day she was sent the early conciliation certificate that enabled her to present her claim.

    c. She presented her claim on 22 May 2024. It included complaints of victimization and also a statement "I have been victimized for whistle blowing". This was taken as a complaint of whistleblowing detriment. In those circumstances, although she refers to s.27 EQA, it is not entirely clear whether she intended to complain of victimisation under the Equality Act 2010 because the description of the act or communication relied on to give her protection is that she raised a Health & Safety concern. However, the case did not reach the stage of a preliminary hearing for case management which would have clarified that. She also complained of direct race discrimination, constructive unfair dismissal and there is a section in the attached particulars of claim, complaining of a breach of section 44 ERA

which concerns detriment on health and safety grounds.

d. Mrs Glenn did not identify a representative through the claim form.

e. The ACAS conciliator contacted her on 13 August 2024, as can be seen from page 55. In that eamil, Mr Jenkins, the conciliator, said that he had tried to contact the claimant and had been approached by a representative for Lakeside who was in the process of submitting their response but wanted to explore the possibility of settlement. He put forward on their behalf an offer of settlement and said that it was for her to consider and she was free to take legal advice. This email, directly to the claimant, says:

> "Please call me to discuss your response.
>
> You can:
>
> - accept the offer
> - reject it
> - make a new offer, which I will ask the respondent to consider.
>
> If you make anew offer it means you have rejected the offer above."

Mr Jenkins continues:

> "If an offer is accepted the next step is to agree the wording of terms for the settlement known as a COT3. Settlements cannot be reached until the wording is agreed. The wording is the responsibility of the claimant and the respondent. I will in touch about this at the appropriate time."

f. Mr Jenkins followed that up on 16 August saying that he had been trying to contact the claimant to discuss the claim, see page 56.

g. On 19 August the claimant responded saying "Thank you for your email. My representative will contact you as soon as possible." So, it is the claimant who first indicates that she has a representative or that a representative will contact ACAS on her behalf. That is in response to Mr Jenkins saying he wanted to discuss the claim and following up on his email of 13 August 2024 to ask her for a response to the respondent's offer.

h. The same day, Mr Jenkins wrote back and said, "Just so I can amend our records please could you provide me with the contact details of your representative."

i. The claimant replied on 17 September 2024 (see the bottom of page 57), saying "Please find the details of my representative..." and then gave details for Mr Robinson.

j. There is absolutely no qualification in the way that she describes representative either in that email or in the email in which she first puts forward the suggestion that she had got a representative. The claimant is not a lawyer, Mr Robinson is not a lawyer, and I have no reason to doubt

Mrs Glenn when she says that she was not intending to convey a technical meaning by the word "representative"; I accept that she was not aware of it other than as an ordinary English word. Nevertheless, Mr Jenkins had emailed her to put forward an offer, asked her to respond to it and then emailed her to say, "I have been trying to contact you to discuss *this claim*" (my emphasis) and the claimant said, in effect, "I want my representative to discuss the claim on my behalf". It is not objectively difficult to understand what that is conveying. Viewed objectively, Mrs Glenn appears to be authorizing Mr Robinson to communicate with ACAS, discuss the claim on her behalf and respond to the offer. ACAS had no reason to think that there were any limits on what Mr Robinson could say or do. They were entitled to rely upon any communications from him as being on behalf of Mrs Glenn up to and including acceptance of a settlement. After all, the primary function of ACAS is to conciliate a voluntary concluded settlement which avoids litigation.

k. Mr Robinson is a friend of Mr Glenn and had been suggested as someone to speak to ACAS on Mrs Glenn's behalf as Mr Glenn explained in his statement.

l. Moving forward to the end of the following month, on 30 October 2024 (page 115), Mr Robinson emailed to the ACAS conciliator responding to the most recent communication, saying:

> "Sorry for delay in my reply but due to the sensitive nature of this case I needed to await Nike response and we have concluded that the counter-offer which is final would be £5000 plus the outstanding payment already paid. If this is not excepted [I think he means accepted] then this matter can be settled at a tribunal. Derek"

m. The conciliator replied on 4 November 2024 (page 113), saying:

> "The respondent has now replied. They have rejected Nike's offer. While I understand that her offer was a final offer the respondent has made a counter-offer and I am duty-bound to convey that offer."

n. I accept that, reading the email as a whole, Mr Jenkins relayed an offer that had been put to him by the respondent rather than using his own words, when he said:

> "We believe the claimant's claims hold very little merit in law. However, as a final attempt to compromise I am instructed to split the difference and offer £3,000 along with waiver of the sums owed. For the avoidance of doubt this sum will be paid tax free."

o. It is clear from the context that that comment about the merits of Mrs Glenn's claim was that of the respondent's representative, relayed to the claimant by Mr Jenkins. It was not that of the conciliator himself.

p. In the meantime, a notice of hearing was sent out by the tribunal on 10 November for a preliminary hearing on 24 March 2025 with some case management orders.

q. The claimant applied for an extension of time to complete those on 6 December.

r. There was a response offering £4,000 and then the respondent, on 2 December, offered £3,500 plus the waiver of the sums they alleged should be repaid by Mrs Glenn. That was relayed in an email of 2 December 2023 at page 107. In that, which is headed "without prejudice", Mr Jenkins says:

> "Dear Derek, further to our conversation, I contacted the respondent with Nike's offer of £4,000. They have confirmed that the offer is rejected. However, they are willing to agree to £3,500. Their offer is made subject to parties agreeing terms for the agreement."

s. On the following page, Mr Jenkins explained that the respondent had sent has draft settlement terms for the agreement. He said that he attaches the COT3 wording and emphasises that it is a draft, not a final agreement, and that the recipient should not sign the draft or take any action listed in any clause until the agreement is confirmed by ACAS as binding. It says that Mrs Glenn must read the terms carefully. The exact wording used (under the heading "What you need to do" is:

> "Please ask Nike to read the terms carefully and then call me to confirm that she either wants to:
>
> - agree to the terms and to enter into a legally binding agreement,
> - reject the terms and offer a revised version which I will send to the respondent for their consideration,
> - talk about any queries that you have."

t. It was made clear to Mr Robinson that those are the claimant's option including that if she agrees to the terms, she will enter into a legally binding agreement. The email continues with a section headed "Important".

> "If I am advised that offer terms are accepted either by phone or email, they become legally binding and the matter is resolved. I will then create and send the COT3 agreement and covering letter.
>
> There is no cooling off period.

u. That was on 2 December 2024. There does not appear to have been an immediate response.

v. On 9 December Mr Jenkins emailed Mr Robinson again asking if Mrs Glenn wishes to accept.

w. There was then a telephone conversation between Ms Henderson, on behalf of Mr Jenkins, and Mr Robinson on 13 December 2024. Mr Robinson's account is in his statement at page 165. He sets out a single a paragraph dealing with his interactions with Mr Jenkins and Ms

Henderson. The details he provides do not match the detailed chronology from the contemporaneous emails as I set out below. He states that at one point he regarded Mr Jenkins' attitude as changing, stating that "Lakeside could play this out for months" and he had responded that "he was confused about whose side Mr Jenkins was on." The offer of £3,500 plus an overpayment was made. Mr Robinson said this:

> "I was yet to relate this offer to Peter [Glenn] when one day while I was out shopping, I received a call from a female from ACAS and in conversation, discussed the £3,500 offer. I did not accept the offer. I was too busy that day. I could not digest what she was saying as the line was not clear."

x. He goes on to say that he discussed it subsequently with Mr Glenn and Mr Glenn said that it would be rejected.

y. So that is Mr Robinson's account of that conversation.

z. The account of Ms Róisín Henderson appears by inference from an email that she sent which is at the bottom of page 117 at 12:35 on 13 December. This short email says:

> "Dear Derek,
>
> As discussed in our call earlier, following confirmation that the claimant has accepted the terms this agreement is now legally binding.
>
> Please find attached the final COT3 and cover letter with instructions.
>
> Kind regards
>
> Róisín Henderson on behalf of the assigned conciliator Jamie Jenkins."

aa. ACAS then informed the respondent that there had been an agreement (page 128) before telling the tribunal that there had been a conciliated agreement.

bb. It was not until 19 December that Mr Robinson emailed back to ACAS and simply says "Jamie could you ring me asap." He does not say in that email that the assertion in the email from Ms Henderson that the claimant had accepted the terms is incorrect. He does not say, I did not agree the terms, he just asked to speak to Mr Jenkins by phone. They clearly do so on 20 December and Mr Jenkins sent an email that is at page 116. In that email Mr Jenkins says,

> "I had … phone conversations with you on 2nd and 6th of December where I asked you to discuss the proposed terms with Nike, and to confirm if she was willing to accept them.
>
> You spoke with my colleague in my absence on 13 December and confirmed that the terms were agreed. My colleague declared a legally binding agreement, notified the tribunal that the claim was settled and issued the formal COT3.
>
> I understand that Nike is refusing to sign the COT3. I remind you that payment

> is not triggered until Nike returns the final agreement to the respondent's representative."

16. The first question is, based on that chronology, was there an agreement?

17. Ms Henderson's email to Mr Robinson on page 117 asserts that on 13 December 2024 he gave verbal agreement to an offer that was made through Mr Jenkins on 2 December 2024. That offer was stated to be subject to agreeing the terms attached and attached the draft COT3.

18. If that offer of 2 December 2024 was accepted, does that amount to a legally binding agreement? The claimant says that it does not because clause 3 of the COT 3 is incomplete. It seems to me that details of the sort code and account number for her bank account are trivial in the context of the terms as a whole. Overall, the question is whether the claimant, through Mr Robinson, agreed to withdraw the claim in exchange for £3,500 and a waiver of any right by the respondent to recover the alleged overpayment. How the respondent was to pay the sum was not an integral part of the agreement, not such as to cause it to be ambiguous and not such as to show lack of meeting of minds or that acceptance was conditional. Clearly, the conciliators did not regard that it was necessary to conclude an agreement that those details be included.

19. Ms Henderson, who was one party to the telephone conservation, has not given evidence. The only evidence that I have of what she would say if she were present is in the email of 13 December and what she did on the strength of the conversation, namely notify the tribunal and the respondent that the claim was at an end. Other than that there is the hearsay statement in Mr Jenkins' email. On the other hand there is Mr Robinson's witness statement but he has not attended to confirm that it is true or to be cross-examined upon the brief outline of the telephone conversation I quote in para.15.w. above. I do take into account that an ACAS conciliator, such as Ms Henderson, will be experienced in ensuring that there is clarity and certainty before declaring a claim to be at an end. Their role is to act professionally and impartially and that is what they are trained to do. That is not to say that errors might not occur, but one might expect that they would take care to ensure that they did not misunderstand what they were being told particularly over the phone by a lay representative for somebody acting in person. Had there been uncertainly in Ms Henderson's mind, following the conversation she had with Mr Robinson, she is unlikely to have written in the terms that she did to Mr Robinson at page 117 or to have written to the employment tribunal.

20. Looking at Mr Robinson's statement, there are quite a number of points that appear from the contemporaneous correspondence which one might expect Mr Robinson to have included that are not. Ther are a number of points which one might expect to be explained which have been omitted. He says that he did not have time to contact the claimant or her husband about the offer and yet it was made on 2 December and the telephone conversation took place on 13 December so that is curious. Some of his emails are also inconsistent with his statement. He states in his statement that there was an offer put forward by the respondent of £1000 plus an overpayment but says he was not aware of an overpayment. However, an email from him (page 115) puts forward an offer on

behalf of the claimant of £5,000 plus an outstanding payment already paid. This is an apparent inconsistency about which it would have been helpful to hear Mr Robinson's explanation. At the moment it is an unexplained inconsistency. I am in the position where about this crucial point (i.e. what happened in the telephone conversation on 13 December) both sides are relying on hearsay statements. I do prefer the contemporaneous email evidence put forward on behalf of the respondent, in particular, that from Ms Henderson because of those points of unexplained inconsistency in Mr Robinson's statement and the likelihood that the ACAS conciliator would not have declared a binding settlement had she not been told that. I find that Mr Robinson did state to Ms Henderson that the claimant agreed to settle the claim for £3,500. That being the case, subject to the question of whether Mr Robinson was acting with ostensible authority, I find that there was a binding legal agreement.

21. The ostensible authority question requires me to look again at the emails at pages 56 and 60 that the claimant sent to the ACAS conciliator.

22. For the first time, during her oral submissions, the claimant said that she had not, in fact, authorised Mr Robinson to act as her representative with authority. I accept that she is not a lawyer. Plainly, she cannot be expected to be aware of the Law of Agency. However, in the context of the email as a whole, and I have read out the detail in those emails in order to show why I have reached this conclusion, she must have known that she was authorising Mr Robinson to discuss the claim on her behalf. She might reasonably be expected him to seek instructions from her but the outward picture, as between the claimant and the outside world (who for this purpose is ACAS), was that Mr Robinson was her authorised representative. It is not until today that she has argued otherwise or that she has argued that representatives should not be understood in that way. It might be preferable for ACAS to include, when communicating with a litigant in person who asks them to speak to their representative, a response that says what they understand that term to mean. Nevertheless, as between the claimant and the wider world, Mr Robinson had ostensible authority because she told ACAS that he was her representative.

23. Other arguments that were raised by the claimant were that there needed to be a signature on the document to show that both parties agreed. She argued vividly and passionately that the COT3 is a crucial document and that common sense requires that there should be a signature just to be sure that it shows both parties agree. She said to find otherwise is not right and should simply not be accepted.

24. As I tried to explain in the hearing, the law in this area is seeking to achieve a balance of competing interests. From the respondent's point of view, the claimant told ACAS that Mr Robinson was acting on her behalf. Mr Robinson agreed a deal. Mr Robinson was told in advance, by email, that oral agreement would be binding and there was no cooling off period. The law says that a signed COT3 is not necessary to reach a binding agreement (Gilbert). That is presumably why that statement is included in the conciliator's email. So, from the point of view of the respondent, why should the deal not bind the claimant?

25. The final question that I need to go on to consider is whether the agreement

should be set aside.

26. This is an argument that has developed over time. The claimant argues that there was coercion by ACAS and relies on a number of factors. She points to the evidence in Mr Robinson's statement of an impression that Mr Jenkins' attitude shifted, the statement that the respondent "could play this out for months". Even if that was said, it does not seem to me to be evidence of undue pressure or coercion. The litigation was at an early stage and the emails from the conciliator are in the standard form that emphasise that people have the right to take legal advice. The first preliminary hearing was listed during this period of the relevant chronology. There is nothing from which it is proper to infer that anything was said or done which put pressure on Mr Robinson to agree by a particular date, for example.

27. It is then suggested that the chasing offers meant that the whole process got rushed and pressured. In fact, the communications were directly with Mr Robinson rather than the claimant or Mr Glenn and, therefore, their evidence of this is hearsay. It is also not borne out by the email exchanges, in particular, the offer that was ultimately accepted was made on 2 December; it was chased once on 9 Decemebr and then by a phone call on 13 December. There was no time limit on the offer, which is often the case and that chronology does not seem to me to set out any particular unusual pressure of time.

28. There is then the question about the statement about merits in the email from Mr Jenkins, but I am satisfied that that was not a statement by ACAS. Indeed, Mr Robinson does not refer to it in his witness statement. There is nothing in particular out of the ordinary in these emails and there are no grounds for a suggestion that there was coercion or undue influence by ACAS.

29. There is no basis to set aside this agreement and the claimant entered into a concluded agreement. Her rights are now under that agreement.

Approved by:

Employment Judge George

23 November 2025

JUDGMENT SENT TO THE PARTIES ON

24 November 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the

judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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