Neutral Citation Number: [2026] EAT 11

Case No: EA-2023-000957-DXA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13th January 2026

Before:

THE HON. LORD FAIRLEY, PRESIDENT

Between:

Mrs A Darlington

Appellant

and

London Borough of Islington

Respondent

- -

Mr Jamie Susskind, of Counsel, for the Appellant
Mr Alexander Line, of Counsel, for the Respondent

Hearing date: 13 January 2026

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JUDGMENT

SUMMARY

Practice and procedure; scope of COT3 settlement agreement

The appellant was employed by the respondent at a school operated by the respondent. She raised a safeguarding issue and complained to OFSTED about practices at the school. She maintained that her complaints were protected disclosures. She left her employment at the school on 25 May 2021.

Following the provision of a negative reference by the school, the appellant caused a letter before action to be sent in which she alleged that she had been subjected to detriment on the ground of having made a protected disclosure. Following negotiations through ACAS, a COT3 agreement was entered into. The parties to the COT3 were the appellant, the Governing Body of the school, and the respondent as her employer.

The settlement agreement bore to be in full and final settlement of all and any claims which the appellant "has or may have in the future against the School, the Employer or any of its governors, officers or employees whether arising from the employment with the Employer, its termination or from events occurring after this agreement has been entered including, but not limited to, claims under…the Employments Rights Act 1996"

Meanwhile, the appellant applied for a job with a different school operated by the respondent. Her application was not successful, and she sought to bring a claim against the respondent in which she alleged that she had been subjected to detriment on the ground of the same disclosures that had formed the basis of the letter before action.
The Employment Tribunal held that the COT3 barred her from bringing such a claim. On appeal against that decision.

Held:
The Employment Tribunal had not erred in law. Objectively, the intention of the COT3 agreement was to settle of all existing and potential future claims against the respondent and others arising from the appellant's allegations that she had made protected disclosures whilst she was in the respondent's employment at the first school and that, as a result, had been subject to detriment. The use of the words "*whether arising from her employment with the*

Employer, its termination or from events occurring after this agreement" was clearly intended to exclude claims in respect of future alleged acts of alleged detriment said to be causally connected to the same allegations of having previously made protected disclosures.

The appeal was therefore dismissed.

THE HON. LORD FAIRLEY, PRESIDENT:

Introduction

1. This appeal relates to the scope of a COT3 agreement entered into between the appellant and the respondent on 22 September 2021. The material facts are not in dispute. They are summarised by the Tribunal at ET§ 4 to 10.

Facts

2. The appellant worked as an Early Years Educator, caring for and educating babies and toddlers in council-run schools. Between 2000 and May 2021 she was employed by the respondent at a school called Hargrave Park School ("Hargrave"). During her employment there, she raised a safeguarding issue and complained to OFSTED about practices at the school. She maintained that these complaints were protected disclosures. The appellant left Hargrave on 25 May 2021.

3. On 4 July 2021, she applied for a job at another establishment, also run by the respondent, called Westbourne Early Years Centre ("Westbourne"). On 19 July 2021, she was offered a job there subject to provision of a satisfactory reference in respect of her time at Hargrave. A reference was duly provided, but was not satisfactory in its terms, and the offer of a job at Westbourne was withdrawn on 9 August 2021.

4. The appellant maintained that the reference in respect of her time at Hargrave was misleading and inaccurate and that this was because she had made protected disclosures in the course of her employment there. A letter before action was sent in respect of that potential complaint. Following negotiations, a settlement agreement was reached through ACAS. That agreement was committed to writing in the COT3. The parties to the COT3 were (a) the appellant (referred to as "the Employee"); (b) the Governing Body of Hargrave (referred to as "the School"); and (c) the respondent (referred to as "the Employer"). The COT3 was signed by the three parties on 20, 21 and 22 September 2021.

5. It was explained during the appeal that the Governing Body of Hargrave is a body corporate for the purposes of section 19 of the **Education Act, 2002** and thus has legal personality. Hargrave is a maintained school. In terms of section 35(2) of the Act, any teacher employed in a maintained nursery school is employed by the local authority. For the purposes

of this appeal, therefore, the appellant's employer when she worked at Hargrave was the respondent.

6. The COT3 provided *inter alia* for the old reference to be retracted and for a new reference to be provided in its place. So far as material to this appeal, clause 3 of the COT3 was in the following terms:

> "The employee accepts and agrees that the terms set out in this agreement are in full and final settlement of all and any claims which the Employee has or may have in the future against the School, the Employer or any of its governors, officers or employees whether arising from the employment with the Employer, its termination or from events occurring after this agreement has been entered including, but not limited to, claims under…the Employments Rights Act 1996…excluding any claims by the Employee to enforce this agreement, any personal injury claims which have not arisen as at the date of this agreement, and any claims in relation to the Employee's accrued pension entitlements."

7. On 13 September 2021, and thus prior to the execution of the COT3 by any of the three parties, the appellant re-applied for the role at Westbourne. She was interviewed on 28 September 2021 and was asked to provide references. In line with the COT3, a new reference was duly provided in positive terms in respect of her time at Hargrave. In spite of that, however, the appellant was not ultimately offered the job at Westbourne. On 20 October 2021, she was told that her re-application had been unsuccessful.

8. The appellant maintains that the respondent's failure to offer her the position at Westbourne was on the ground of the protected disclosures made by her whilst she worked at Hargrave and was thus an unlawful act of detriment contrary to section 47B of the Employment Rights Act 1996.

9. On 17 February 2022 she sought to bring a complaint to that effect in the Employment Tribunal against Westbourne and against the respondent. The respondent replied to that claim with a challenge to jurisdiction based upon the COT3 agreement. It also maintained that Westbourne had no separate legal personality from the respondent, and thus that the Tribunal was precluded from hearing the claim against the respondent by the terms of the COT3.

The Tribunal's decision and reasons

10. In a Judgment dated 4 September 2023, the Tribunal agreed that Westbourne could not be a respondent to the claim as it did not have legal personality separate from the respondent. That decision is not challenged in this appeal.

11. The Tribunal also agreed with the respondent's challenge to jurisdiction on the basis of the COT3, and so dismissed the claim. The key sections of the Tribunal Judge's reasons on that latter point were ET§14 to 19 and 23:

> 16. The wording of any settlement or compromise agreement must be considered carefully to ascertain what the parties are reasonably to be taken as having intended. The precise wording of the agreement is paramount. In *Royal National Orthopaedic Hospital Trust v Howard 2002 IRLR 849* the Employment Appeal Tribunal said the parties must use language which is "absolutely clear and leaves no room for doubt as to what it is they are contracting for".
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> 17. First, the respondent was a party to the Settlement Agreement. It was identified as the "Employer" and a representative committed the respondent to the Settlement Agreement and signed on the respondent's behalf on 22 September 2021. So the London Borough of Islington was a party to the COT3 Settlement Agreement and may take the benefit from this.
>
> 18. The agreement specifically provided that the consideration was in "full and final settlement of... any claims which the Employee... may have in the future against... the Employer... from events occurring after this agreement has been entered". So, the agreement is not limited to compromising events that had occurred in the past. Former and current claims were specifically mentioned as was future claims.
>
> 19. The agreement was wide: "all and any claim... including, but not limited to, claims under... the Employment Rights Act 1996". I think the circumstances of the agreement make it quite clear that the respondent sought to preclude further claims made by the claimant (of any kind); however, even if that construction is too wide (which I do not think it is), then the reference to the specific legislation of the Employment Rights Act 1996 denotes an intention to specifically provide for a claim under this statutory provision and therefore will preclude a future claim of whistleblowing.
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> …
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> 23. Even if I were to give the COT3 Settlement Agreement the narrow or restrictive interpretation the claimant contends, the agreement would also exclude claims arising from the claimant's employment. Therefore, as the alleged protected disclosures arose within the claimant's employment they would be specifically excluded. Consequently, the claimant would not be able to rely upon them and therefore any complaint of a whistleblowing detriment arising in respect of her non-appointment out Westbourne Early Years Centre would be bound to fail."

The grounds of appeal and appellant submissions

12. Three inter-related grounds of appeal (grounds 2 to 4) were allowed to proceed following a rule 3(10) hearing on 5 November 2024. In grounds 2 and 3, the appellant submits that the judge erred in treating the construction of the COT3 as an exercise in literal interpretation and so reached an erroneous conclusion as to its scope. She suggests that the judge failed to identify certain relevant background knowledge and circumstances that were germane to the exercise of construction. In particular, it is submitted that the judge did not consider the scope of clause 3 in the light of the "circumstances in which the release was given", which circumstances would have served to limit its scope.

13. The appellant maintains that the purpose of the COT3 was only to compromise her claim against Hargrave. That claim arose after she had left employment there. The purpose of the COT3 was not to prevent her from being able to sue other schools operated by the respondent, should any such claims arise in the future. Such a conclusion would permit her to be victimised by the respondent for the rest of her career. There is a high public interest in staff being able to report wrongdoing without fear of retribution. No reasonable person would have imagined that to be the parties' intention. Nor was it the purpose of the COT3 to grant the respondent perpetual immunity in all contexts. Such a conclusion would prevent the appellant from bringing a challenge to, for example, a parking ticket, or a judicial review.

14. The only "respondent" named at the top of the COT3 was "Hargrave Park School". That reflected the fact that the COT3 was, in effect, an agreement between the appellant and the school that had employed her. Both parties understood that the respondent was included in the COT3 only for the formal reason that Hargrave did not exist as a legal entity, and the respondent was therefore, as a matter of law, the employer of those who worked there.

15. The expression, *"the School* [Hargrave Park School], *the Employer* [London borough of Islington] *or any of* ***its*** *governors, officers or employees"* should also have caused the Judge to realise that a council does not have *"governors"* and that the COT3 was, therefore, intended only to settle claims against Hargrave rather than against the respondent more generally. The clear purpose of the COT3 was to bar claims against the parties to it in relation only to detriments to which the appellant was subjected *by Hargrave*. It was not intended to bar proceedings in respect of alleged detriments visited upon her by the respondent when acting in another capacity, including as the operator of Westbourne.

16. In ground 4, the appellant submits that the alternative conclusion at ET § 23 was also erroneous in law. The appellant submits that, on a proper construction, the words *"…whether arising from her employment with the Employer, its termination or from events occurring after this agreement has been entered…"* related only to claims against Hargrave, and not against other schools. The claim presented in February 2022 was not against Hargrave. It was against Westbourne for not offering the appellant a job.

Respondent's submissions

17. For the respondent, it was submitted that the Tribunal had not taken a purely literal approach to the construction of the COT3. The Tribunal was entitled, at ET § 16, to refer to the importance of the "*precise wording of the agreement"*, because that is always the necessary starting point from which the intentions of the parties were objectively construed. The Tribunal had clearly understood, however, that *"the wording of any settlement or compromise agreement must be considered carefully to ascertain what the parties are reasonably taken to have intended"* (ET§16).

18. The scope of the exclusion was clear. The proposed claim that had led to the COT3 agreement concerned whistleblowing detriment. The claim that the appellant then sought to bring in February 2022 was also a claim of whistleblowing detriment arising from the same allegedly protected disclosures. The parties clearly intended to exclude future claims, including claims arising "*from events occurring after this agreement has been entered*". That language made clear that the parties had in mind not only the existing dispute but also future disputes.

19. The appellant's argument that the agreement should have been construed as relating only to claims made against the respondent in respect of her employment at Hargrave or to detriments imposed upon her by Hargrave was inconsistent with both the words and the context of the agreement.

20. In relation to ground 4, the relevant wording in clause 3: *"... whether arising from her employment with the Employer, its termination or from events occurring after this agreement"*, was deliberately wide and encompassed any claim based upon the allegedly protected disclosures made by the appellant whilst she was working for the respondent at

Hargrave. It also, therefore, encompassed the rejection by the respondent of her job application to Westbourne after the signing of the COT3 to the extent that it was suggested that such rejection was "on the ground" of the same disclosures.

Relevant law

21. An ACAS-conciliated agreement falls to be construed in the same way as any other contract. As was noted by Lord Bingham in **Bank of Credit and Commerce International SA v Ali and ors** [2001] ICR 337 (paragraph 8), 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… inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified.

22. A COT3 agreement may act as a bar to both present and future claims. Sufficiently clear and specific wording can exclude a claim that was not in contemplation at the date of the agreement: **Ali** at paragraph 9; **Royal National Orthopaedic Hospital Trust v Howard** [2002] IRLR 849. The precise wording of a general release given in an employment settlement is important. The question is always what, looking objectively at the agreement, was the intention of the parties. Beyond these general principles, previous cases decided by the courts are merely illustrative examples subject to the terms of the particular agreements under consideration.

23. In **Arvunescu v Quick Release (Automotive) Ltd** 2023 ICR 271, for example, the Court of Appeal held that the wording of a COT3 was wide enough to cover a discrimination claim that had not been contemplated by the parties at the time the agreement was concluded. The agreement stated that it compromised all claims A "has or may have" against the respondent "arising directly or indirectly out of or in connection with the claimant's employment with the respondent, its termination or otherwise", even if A "may be unaware at the date of this agreement of the circumstances which might give rise to it or the legal basis for such a claim". The claimant sought to bring a victimisation claim after he was rejected for a job with a company based in Germany, which was either a wholly owned subsidiary or joint venture of the respondent. A necessary part of the claim was that the reason for refusal to appoint him was that he had brought proceedings against his former employer on the termination of his employment. The court considered that the QRA Ltd was one that was

connected with A's employment with QRA Ltd and that existed at the date of the settlement. The purpose underlying the COT3 was to settle all such existing claims.

24. In **Ajaz v Homerton University Hospital NHS Foundation Trust** 2023 EAT 142 the EAT upheld an employment tribunal's decision that the terms of a COT3, which settled whistleblowing detriment claims that A had brought in 2017, prevented A from raising new whistleblowing detriment claims in 2021 that were based on the same protected disclosures. Under the COT3, A had agreed not to reactivate "the issues/complaints in the proceedings or issue any further and/or new claim or claims […] against [the Trust…] arising from or in relation to the issues/complaints in the proceedings". The COT3 therefore settled not just the complaints but the "issues" in the "proceedings". Whether A's disclosures were protected was plainly and unambiguously an "issue" in the "proceedings". A could bring future claims but not to the extent that they reactivated the issues in the proceedings. The EAT agreed with the employment judge that it was not sufficient that the new detriments about which A wished to complain post-dated the COT3 such as to exclude them from the settlement. Rather, claims which repeated "integral parts" (i.e. contested issues) of the earlier detriment claims were settled.

25. Section 47B **ERA** states:

> **47B Protected disclosures.**
>
> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
>
> (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
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> (a) by another worker of W's employer in the course of that other worker's employment, or
>
> (b) by an agent of W's employer with the employer's authority,
>
> on the ground that W has made a protected disclosure.
>
> (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
>
> …
>
> (3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, "worker", "worker's contract", "employment" and "employer" have the extended meaning given by section 43K.

26. A whistleblowing complaint may, thus, only be brought by a "worker" against their "employer" or former employer (see **Woodward v. Abbey National (No 1.)** [2006] ICR

1436). Section 43K contains an extended definition of "worker" and "employer" for these purposes.

Analysis and decision

27. As a matter of law, the appellant's employer when she worked at Hargrave was the respondent. Arguably, however, she may also have been able to bring a complaint against the Governing Board of Hargrave under the extended definition of "worker" and "employer" in section 43K **ERA**. Given that possibility and also the possibility of secondary individual liability under section 47B(1A) (see, for example, **Timis v. Osipov** [2019] ICR 655) it is entirely understandable that various parties were included or referred to in the COT3 agreement. There is no doubt that the order in which parties were described in clause 3 could have been clearer. It is correct that the respondent does not have "governors", but Hargrave did, and the intention is tolerably clear even if poorly expressed.

28. I do not accept the appellant's submission that the Tribunal's self-direction (at ET § 16) that the precise wording of the COT3 was "paramount" was erroneous. That was simply a statement of the general principle seen in **Ali** and **Howard** that the outcome of any challenge to jurisdiction based upon a settlement agreement will always turn on the precise words used in the agreement. I note also that paragraph 3.143 of the IDS Handbook on Employment Tribunal practice states of the **Ali** case:

> "Although it is unclear what kind of specific wording their Lordships had in mind that might have defeated the 'stigma damages' claim, what is certain is that the precise wording of a general release given in an employment settlement is of paramount importance."

That is a correct statement of the law and is likely, in my view, to have been the source of the Tribunal's self-direction at ET § 16.

29. The Tribunal took account of the circumstances in which the COT3 came to be concluded. It expressly narrated those circumstances in its reasons, in particular at ET § 3 to 5, and referred to them again by reference at ET § 19.

30. I reject the premise of ground 2 that the Tribunal applied an erroneous approach in law to the task of construing the agreement.

31. Turning to ground 3, and skilfully as the argument was made, I do not accept the submission made by Mr Susskind that, on a proper construction, the COT3 was only intended to affect claims in respect of detriments to which the appellant was subjected by Hargrave.

32. When the events that gave rise to the COT3 arose and also when the COT3 was concluded, the appellant was no longer an employee of the respondent. The appellant and the respondent both knew, however, that she had re-applied on 13 September 2021 for a different role with the respondent at Westbourne. The appellant and the respondent must also be taken to have been aware of the decision of the Court of Appeal in **Woodward** that a claim for section 47B detriment could still be made against a former employer. An important part of the context in which the COT3 came to be concluded was that it was within the reasonable contemplation of the parties that a further complaint might still be made against the respondent, by the claimant based upon the same allegations that she had made protected disclosures in respect of her time at Hargrave.

33. The purpose of the settlement agreement was plainly to avoid litigation upon all disputed issues. One such issue was whether or not the appellant had made protected disclosures at all. Objectively, and having regard to the circumstances in which it came about, the intention of the COT3 agreement involved settlement of all existing and potential future claims against the respondent and others arising from the appellant's allegations (a) that she had made protected disclosures whilst she was in the respondent's employment at Hargrave; (b) that, as a result, she had been subject to detriment.

34. The use of the words "*whether arising from her employment with the Employer, its termination or from events occurring after this agreement*" was clearly intended to exclude claims in respect of future alleged acts of alleged detriment said to be causally connected to the same allegations of having previously made protected disclosures.

35. I do not, therefore, accept the appellant's contrary argument that the agreement, objectively construed, was limited to settlement of claims against the respondent only in its capacity as operator of Hargrave. Had that been the objective intention, parties would have defined the scope of the agreement in that way. That is not, however, what was done in spite of the fact that parties clearly addressed their minds to exclusions and defined these at the end of clause 3.

36. For completeness, the Tribunal was also correct to conclude (ET § 23) that, in any event, the proposed claim presented on 17 February 2022 "arose out of" the appellant's employment with the respondent at Hargrave until May 2021. In that respect, the position is similar that which arose in both **Arvunescu** and **Ajaz**. As I have already noted, the dispute that was settled by the COT3 in this case was not confined to the issues of detriment and causation. On the face of matters it also included the issue of whether or not the appellant had made protected disclosures at all. In her proposed claim, the appellant would have had to rely upon the proposition that she had made such disclosures when employed at Hargrave. That was a matter that "arose out of" her prior employment by the respondent. Clause 3 plainly excluded detriments resulting from such disclosures which occurred after the agreement was concluded.

37. In these circumstances, there was no error of law in the conclusion of the Tribunal that the COT3 agreement acted as a bar to further proceedings against the respondent in circumstances where that claim was based upon the same allegedly protected disclosures but upon a different alleged detriment which arose after the date of the COT3.

38. The appeal is, therefore, refused.