# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Allison

**Respondent:** University Hospitals of Morecambe Bay NHS Trust

**Heard at:** Manchester **On:** 2 April 2019

**Before:** Employment Judge Howard
(sitting alone)

**REPRESENTATION:**

**Claimant:** Mr J Laddie QC, Counsel
**Respondent:** Ms L Gould, Counsel

# JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The respondent's application to strike out the matters and allegations raised by the claimant in her claim form predating 13 April 2015, is refused. Subject to limitation, the Tribunal has jurisdiction to determine the entirety of the claim.

2. The respondent's application to strike out allegations in the claim form as identified below and/or for a deposit order as a condition of the claimant pursuing those allegations, is refused.

# REASONS

1. At a preliminary hearing before Regional Employment Judge Parkin on 12 November 2018 the respondent raised several preliminary issues which it sought to have determined. Those issues were laid out in a document entitled "Preliminary Issues" provided by the respondent's solicitors dated 21 March 2019. Regional Employment Judge Parkin ordered that those issues be determined at a preliminary hearing in public which was held before me on 2 April 2019.

2. At the outset of that hearing I identified and agreed with the parties the issues to be determined as follows:

(1) The Settlement Agreement – should the claimant's claims arising on or before 13 April 2015 be struck out on the basis that the claimant waived her rights under a valid Settlement Agreement? The parties agreed that to determine this issue it would be for the claimant to satisfy me on the balance of probabilities that she did not receive legal advice as required by, and in compliance with, section 203(3)(c) of the Employment Rights Act 1996.

(2) The section 47B Employment Rights Act 1996 claim – should the allegations laid out below be struck out as having no reasonable prospect of success and/or should the Employment Tribunal order that the claimant be required to pay a deposit to continue with the claims on the grounds that the complaints have little reasonable prospect of success?

I was provided with an agreed bundle of documents for the hearing in which the complaints which were the subject of the strike out/deposit order application were laid out in the claimant's List of Issues at pages 42A-42F of the bundle, and the claimant's further and better particulars at pages 50-61 of the bundle. The respondent's responses to the particularised allegations were contained within the bundle at pages 71-83.

The complaints are as follows:

(i) Late payment of overtime worked in November 2017 (72½ hours) as particularised at items 47 and 50 of the further and better particulars (page 59 of the bundle) – In essence the claimant believes that the respondent caused her financial detriment by deliberately delaying the approval of her claim for extra hours so that she would not be paid in December and only received the monies in January 2018. The respondent's position as laid out in the response to the further and better particulars and repeated in evidence by Mrs Nic Philib is that the claimant had submitted her claim late and so the appropriate authorisation could not be completed before the payroll cut-off.

(ii) Blacklisting within the NHS – The claimant believes that she was subjected to a concerted campaign of blacklisting by the respondent through badmouthing her and providing negative employment references. Examples were provided within the claimant's List of Issues at pages 42b-42e; 2.3.5.1 – 2.3.5.9, and in the claimant's further and better particulars as follows:

(a) in respect of an application for the position of Advanced Practitioner at Bolton Breast Screening Unit in May 2013 (point 9 at page 52);

(b) the termination of her employment with Hitachi in May 2016 (point 38 at page 58);

(c) prospective employment at Blackpool Victoria Hospital and East Lancashire NHS Trust Breast Units between February and May 2017 and May 2018 (point 41 at page 58).

The respondent's position as laid out in the response form and repeated in evidence and submissions on behalf of the respondent today is that the complaint is based purely on speculation. The respondent is a separate legal entity to other NHS Trusts and that the claimant had pleaded no basis upon which she alleged that the respondent had made other NHS organisations not offer her employment.

(iii) The Trainee Consultant post – At page 42 of the claimant's List of Issues (2.3.5.10) and at points 52 and 54 of the further and better particulars (pages 59 and 60), the claimant alleges that the respondent created a Trainee Consultant Radiographer post in around April 2018 but failed to provide the claimant with an application form for it and then withdrew the vacancy deliberately to stop her from applying for the post and furthering her career in April 2018; and in June and July 2018 taking steps to deliberately preclude the claimant from applying for the role by shortening the advertisement period for the post to five days. The respondent's position as stated in the response to the further and better particulars and in evidence from Mrs Nic Philib and in counsel's submission was that the claimant was not provided with an application form for the post as the post had not formally been released for applications due to the Trust having no approval for funding for the post, and that was why it was temporarily withdrawn; that it was latterly re-advertised within a usual time frame and the claimant was offered the opportunity to apply but she did not respond to the offer.

(iv) Limitation Issues – limitation issues were to be determined upon the respondent's application. However, counsel for the respondent agreed that the issue of limitation should not be dealt with as a preliminary issue and was a matter to be addressed as part of the substantive hearing, and the respondent reserved its position on that matter.

3. Having identified and narrowed the issues to be determined I heard evidence from the claimant, Mrs Allison and from Mrs Nic Philib, Deputy Director of Workforce on behalf of the respondent, and I was referred to documents contained within a bundle stretching to 438 pages together with written submissions from both counsel and case law authorities. The hearing commenced at 10.00am, concluding at 5.30pm when judgment was delivered.

**Background**

4. The claimant brings a claim of detriment on grounds of making public interest disclosures pursuant to the provisions of section 47B and Part IVA of the Employment Rights Act 1996. The claimant has been and remains employed by the respondent as an Advanced Practice Radiographer since October 2006.

5. It is common ground that between 2012 and 2015 the claimant made certain disclosures, at least one of which amounted to a disclosure qualifying for protection. These disclosures related to health and safety on the Breast Care Unit and led to a regional quality assurance review and subsequently a Public Health England review in September 2015 which identified serious concerns with and deficiencies in the care provided by the Unit.

6. On 5 October 2014 the claimant lodged a written grievance and agreed to engage in mediation to resolve the issues. Agreement was reached between the claimant and the respondent that she would withdraw her grievance and the respondent would pay her £10,000. Both parties signed an agreement recording the outcome of the mediation. Subsequently, a Settlement Agreement was drawn up in which the claimant agreed to waive her right to pursue claims against the respondent. This Agreement was signed by the claimant on 13 April 2015 and by the respondent on 16 April 2015.

7. Subsequently the claimant made a further disclosure to the Secretary of State for Health, the Right Honourable Jeremy Hunt, on 22 July 2015, and believes that, because of this, she was subjected to further detriments, including those laid out above and a campaign of blacklisting (of actively taking steps to obstruct her obtaining employment with other employers, both within and without the NHS).

8. The claimant lodged her claim on 17 August 2018 complaining about matters both before and after the Settlement Agreement. The respondent seeks to rely upon the Settlement Agreement to prevent the claimant from pursuing any claims predating 16 April 2015.

9. At the outset of the hearing counsel for the claimant confirmed that he was not pursuing an argument that the respondent had breached clause 7 of the Settlement Agreement and so the Employment Tribunal did not have jurisdiction to determine that the Agreement was void and the claimant's rights should therefore be restored.

**The Findings of Fact relevant to the Issues**

10. The claimant provided a detailed witness statement describing the circumstances which gave rise to the Settlement Agreement, how she came to enter into that Agreement and what advice and support she received during the process.

11. She explained that she was invited to a mediation to be held on 19 and 20 February 2015. She attended a pre-meeting with the mediator on 30 January 2015 and found it an intense and unpleasant experience, making her feel that she was a troublemaker and in the wrong and reducing her to tears. She was a member of the Society of Radiographers and contacted her representative, Marie Lloyd, asking to speak to the Union’s legal adviser as a matter of urgency. However, she received no reply and received no legal advice or support in advance of the mediation meeting. She described herself at the time as suffering from work related stress from which

she had had a recent period of absence and feeling extremely nervous and anxious about coping with the mediation. She was accompanied by Marie Lloyd at the mediation and described being placed under consideration pressure to drop her grievance to ensure a successful mediated outcome, which she agreed to do at about 10.00pm.

12. On 20th February 2015, following the mediation, the claimant signed an agreement recording the outcome of the mediation, including her agreement to withdraw the grievance. The respondent's agreement to pay her the sum of £10,000 was not referred to in that agreement; as the claimant explained, Ms Lloyd had told her that, because money was involved, there would have to be a separate document recording the payment and that the Society of Radiographers' ("SOR") solicitor would check it was all in order. The claimant understood that the £10,000 was in compensation for dropping her grievance but she was not told that she would have to agree to any further conditions.

13. By email of 21 February 2015 the mediator sent Ms Lloyd a draft Settlement Agreement for the claimant asking her to ensure that she obtained independent legal advice and including a £300 allowance in the terms for that purpose. On 4 March 2015, Amy Milson of Capsticks solicitors, who were representing the respondent, emailed Ms Lloyd stating:

> *"I understand that you represent Susan Allison…As you are no doubt aware following internal mediation between the Breast Care Unit on Friday 20 February 2015 a draft settlement agreement was prepared for Ms Allison. I just wondered whether you'd yet had chance to advice Ms Allison on this agreement or know whether Ms Allison has sought separate legal advice on the terms of the agreement?"*

14. Ms Milson chased her email up with Ms Lloyd on 9 March 2015 and the respondent has disclosed a file note from Ms Milson of a discussion with Ms Lloyd that day, recording Ms Lloyd as telling her that she had now had the chance to speak to SA (the claimant):

> *"…Got a couple of amendments, in agreement i.e. two way/reciprocal, address to insert, etc. Ms Milson records that she had spoken to DW about them and he is fine and she will put in writing whether the amendments could be made."*

15. This note is consistent with the claimant's recollection that she spoke to Ms Lloyd on 9 March 2015. The claimant explained that this was the first contact that she had had from Ms Lloyd since the mediation meeting, and that Ms Lloyd telephoned her to ask her to confirm her address, how many hours she worked and the title of her Master's degree. She was certain that Ms Lloyd only clarified these details with her and did not say anything about receiving a draft Settlement Agreement nor go through any of the terms over the phone.

16. On 16 March 2015, Ms Milson emailed Ms Lloyd stating:

> *"I know we spoke about this matter and you indicated that you had a couple of suggested amendments to the draft Agreement that you would send me in tracked changes. I just wondered when you may be in a position to do that."*

17. Ms Lloyd replied on 18 March 2015 to Ms Milson, copying in Warren Town, the SOR's full-time union official, stating:

> *"Hi Amy, I've sent all of the details to the person who's dealing with the Agreement, Warren Town. He will contact you regarding this matter."*

18. Ms Milson replied with her thanks and said, *"I look forward to hearing from Warren soon".*

19. On 24 March 2015 Mr Town emailed Ms Milson saying:

> *"I have just come back from sick and will deal with this today. Unfortunately on my return my sec is now off sick so there may be a slight delay in completion. Sorry but will sort as soon as I can."*

Ms Milson acknowledged with thanks.

20. On 30 March 2015, Mr Town's secretary, Vicky Andrews, forwarded an updated Settlement Agreement stating, *"the changes made by the SOR are shown in red".* Those amendments are consistent with the amendments that Ms Lloyd had discussed with Ms Milson; the claimant's correct address and hours of work, the title of the claimant's MSc and mutual confidentiality. Mr Town was identified as the claimant's nominated authorised adviser.

21. The claimant confirmed in evidence that neither Mr Town, his secretary, Vicky nor Ms Lloyd had sent her a copy of the Settlement Agreement on or before 30 March 2015 or discussed and explained the terms of the draft settlement with her at any time. The draft was sent to the respondent's solicitor without her authority, consent or input, and she was not sent an engagement letter or any communication from the SOR to confirm that the union was instructed to advise her on the terms and effect of the Settlement Agreement.

22. The claimant recalled sending an email to Ms Lloyd on 7 April 2015 chasing the compensation payment. That email was not contained within the bundle although the claimant was certain that she had provided a copy to her solicitor. I accept that an email as described was sent and it is referred to in the correspondence from Mr Town cited later in this judgment. She believed that, as she had withdrawn her grievance, the only part of the agreement to be completed was the compensation payment and no-one from the Union or the respondent explained to her that she had to agree to additional non-disclosure and confidentiality clauses to have that compensation.

23. On 8 April 2015 Ms Milson confirmed to Mr Town by email:

> *"I can confirm that my client is in agreement to the suggested changes made. Please therefore accept the changes and arrange for the Agreement to be signed before being scanned back to us."*

24. On 13 April 2015, on behalf of Mr Town, Ms Andrews sent a copy of the Agreement to the claimant, stating:

> *"Please find attached a copy of the completed Settlement Agreement between yourself and University Hospitals of Morecambe Bay NHS Foundation Trust. Please sign and date the Agreement on page 7 and email back to me asap."*

25. The claimant explained in evidence that she downloaded the document whilst staying at the Holiday Inn, Heathrow, whilst working at Hillingdon Hospital on 13 and 14 April 2015. She noticed that the Settlement Agreement had the same title as the agreement that she had already signed on 20 February 2015 and was confused as to why the respondent wanted her to sign a second agreement. She explained that unlike the earlier agreement this version contained a lot of legal jargon and reference to statutes and tax status. This was the first time that she had seen this second Agreement and she was shocked and was not certain what to do. She did not know who Warren Town was but believed that he was the Union's solicitor who Ms Lloyd had referred to when she signed the original agreement as being the person from SOR who would check over the agreement recording the compensation payment to ensure it was fair and accurate.

26. The claimant explained that she had a lot of stress in her life at the time to contend with which had not abated since the mediation, that she really did not want to go back to what had been a very difficult time and that she spoke to her husband for hours by phone and concluded that there would be nothing to be gained by not signing this settlement agreement. She thought that Mr Town was the Union's solicitor and assumed that it would be ok for her to sign as he was supposed to be acting in her best interests.

27. The claimant openly admitted that she had read the Agreement several times and that she notice that Mr Town had signed schedule 1 of the Agreement confirming that he was a relevant independent adviser and that he had advised her on the terms and effect of the Settlement Agreement. However, she was adamant in her evidence that neither Mr Town nor any representative or solicitor appointed by the SOR had actually advised her on the terms or effect of the Settlement Agreement, at any point. Mr Town had simply got his secretary to email the Agreement to her and instructed her to sign it. Notwithstanding this, the claimant signed the Settlement Agreement late in the evening on 13 April 2015 and sent the signed Agreement by email to Mr Town. Ms Andrews emailed the signed Settlement Agreement to Ms Milson on 16th April 2015 which was then signed by the respondent and returned to Mr Town by email on the same date.

28. The claimant admitted that in hindsight she should not have signed the Settlement Agreement as she had not received any advice on the terms and/or effect of the Agreement from Mr Town or any other adviser, and she deeply regretted having done so. She explained that, in fact, she had never met Mr Town nor had any telephone conversation with him, either before, during or up to and including the time that the Agreement was signed. The only contact she had had with Mr Town was through his secretary, Vicky Andrews, when she sent the Agreement to her to be signed. She also confirmed that she received no advice on the terms of the Settlement Agreement from Marie Lloyd, but in any event Ms Lloyd was not certified

as competent by the SOR to provide relevant and independent legal advice and on the terms and effect of Settlement Agreements and not authorised to do so.

29. The claimant explained that her solicitor had contacted Mr Town to request information on the advice to which he attested that he had given and any documentary evidence of that. By email of 25 January 2019 the claimant's solicitor, Mr Rahman, asked Mr Town the following:

> *"I know that you sent a copy of the draft Settlement Agreement to my client on 13 April 2015. Whilst you sent the Agreement to my client on 13 April 2015 she contends that you did not advise her on the terms and effect of the Agreement. She was also not provided with adequate time to consider the terms and/or seek legal advice in accordance with the ACAS Code of Practice. Could you therefore please confirm the following within the next seven days:*
>
> *(1) Did you receive the Settlement Agreement from Capsticks/Trust? Could you please provide a copy of their email/letter?*
>
> *(2) Did you advise Mrs Allison on the terms and effect of the Settlement Agreement, including its effect on her ability to pursue her rights before an Employment Tribunal? If so, when?*
>
> *(3) If the answer to item (1) is yes, please confirm how you advised on the terms and effect. Did you advise her at a face to face meeting, over the telephone or video conference? What did you say in relation to her complaint about whistleblowing detriment? Could you please provide us with copies of handwritten notes of any alleged meeting.*
>
> *(4) If the answer to item (1) is no, please state why you signed the adviser certificate prior to advising on the terms on 13/4/2015.*
>
> *(5) Do you accept that the email below does not constitute adequate advice from a relevant independent adviser under section 203A of the Employment Rights Act 1996?"*

30. Attached was Mr Town's email to the claimant of 13 April 2015.

31. Mr Town replied by a letter of 6 February 2019 stating:

> *"You will appreciate that it is some three years since this matter was concluded so there is a reliance on the documentation rather than memory of the events that took place at the time. From the file I note the following:*
>
> - *On 21 February a draft Agreement was sent to the Regional Officer, Marie Lloyd. This was then relayed to this office for consideration on 23 February.*
>
> - *I responded to the Regional Officer in an email dated 23 February with a list of suggested amendments to the text of the Agreement. Given that we were already aware that both parties wanted to expedite*

*matters quickly I suggested that the RO relay the suggested changes rather than delay matters further.*

- *I would also have made contact with the member by phone to expedite the process. I can only recall asking the RO for the phone number or contact details for the member. As we were under the impression that the matter was resolved satisfactorily and given that this was three years ago any written record would have been destroyed. We only keep the Agreement on file in the member record.*

- *Marie did as requested on 9 March and indicated to me that the employer would not contest any of the suggestions we had offered.*

- *The solicitors acting for the employer suggested we do tracked changes to the document.*

- *We did so on March 30 and sent the revised copy to Capsticks (there was a short delay due to sickness).*

- *Ms Allison emailed the RO on April 7 at 11.51am to chase up when compensation would be paid. No other mention of terms of the Agreement or other outstanding matters of concern were raised.*

- *The RO responded on 7 April at 13:04 confirming that the matter was in hand and awaiting signatures.*

- *Complete Agreement was sent to Ms Allison on 13 April with a request for signature.*

- *Ms Allison signed and sent back the Agreement on April 14 without comment.*

- *The Agreement was sent to the employer's representative for signature on 16 April.*

*We are somewhat concerned that the member alleges that she was not aware of the content or intention of the Settlement Agreement. Certainly no concerns were raised with the SOR at the time other than to enquire when payment would be forthcoming…"*

32. The claimant pointed out that Mr Town had not confirmed whether he had given advice, instead speculating that *"I would also have made contact with the member by phone to expedite the process"* and that he had not answered Mr Rahman's specific questions or confirmed the date or approximate date when the alleged advice was provided.

33. Ms Nic Philib was not present at the mediation nor did she have any direct interactions with Ms Lloyd or Mr Town. She was only able to identify the relevant email and documentary evidence obtained by the respondent and state the respondent's belief that the claimant's and Mr Town's signatures confirming that Mr Town had provided the requisite legal advice and that the claimant had received it

should be taken at face value. As she explained, it was her reasonable assumption upon receipt of a signed document, including a confirmed warranty, that independent advice had been provided in the terms attested to.

34. The claimant provided some context for what she described as her *"foolish decision"* to sign the Agreement without the benefit of legal advice. She explained that she had been in a bad way; suffering from stress because of the bullying and harassment and detrimental behaviour towards her and that she had been dealing with very sad circumstances at the time; her sister had been in the final stages of stomach cancer and suffering badly, and that she had signed the Agreement because she wanted to draw a line and put all the distressing experiences behind her.

35. In respect of the allegations that were the subject of the strike out/deposit application, the claimant gave further detailed evidence in support of all those contentions, pointing out, for example, in respect of a Consultant Radiographer role with Sandwell and West Birmingham Hospitals, that she was explicitly asked at interview if she was a whistle-blower.

36. In respect of the overtime payment the claimant was adamant that she had submitted her claim in time but that her manager had deliberately sat on it.

37. In respect of the Trainee Consultant Radiographer role she was adamant that he respondent had deliberately withdrawn this role to avoid her applying for it, and then had shortened the advertising period to prevent her applying.

38. Ms Nic Philib had undertaken enquiries into all these matters, explaining that the claimant had simply missed the deadline, that there was a funding issue around the Trainee Consultant post and that five days was within the normal range of advertising, and insisting that the claimant had no evidential basis for the blacklisting allegations.

**The Parties' Submissions and the Law**

39. Ms Gould relied upon a detailed skeleton argument supplemented with oral submissions. On the settlement point, Ms Gould pointed out that the burden was on the claimant to establish that she had not received the legal advice to which she had attested by her signature. Ms Gould submitted that the evidence, including Mr Town's reply to Mr Rahman, demonstrated that Mr Town had acted properly and provided advice and that the claimant had liaised with her representative as demonstrated by the amendments to the Settlement Agreement. It was evident that some emails, such as the one of 7th April 2015, referred to by Mr Town in his letter and by the claimant in her evidence, had existed and had now disappeared, and so it was equally possible that other documents and communication might also have existed showing further communications between Mr Town and the claimant. She stated that the claimant's credibility was undermined by the passage of time and the fact that she signed confirming she had received advice whilst knowing it not to be true.

40. The parties referred me to the EAT's Judgment of **Miss S Palihakkara v British Telecommunications PLC [2006] UKEAT 0185/06/0910** dealing with the

requirements of a valid Settlement Agreement and rehearsing the legal principles which apply; concluding that where an Agreement missed out a condition required for a valid compromise (in that case under the Sex Discrimination Act 1975 and Race Relations Act 1976) the Agreement was invalid. In that case both parties knew that there was an issue with a condition of the agreement and the respondent raised public policy arguments about a party seeking to set an agreement aside in those circumstances. The EAT rejected that argument stating; *"the statutes are plain and require a condition".* Ms Gould sought to distinguish the BT case on the basis that there the errors were known to both parties in that case whereas in the present case the alleged failure to advise was not known to the respondent and asked me to strike out the pre-agreement allegations on public policy grounds.

41. In support of the application to strike out and/or order a deposit, she accepted that "no reasonable prospect of success" is a high bar, referring me to **North Glamorgan NHS Trust v Ezsias [2007] EWCA Civ 330, [2007] IRLR 603**, and in respect of the deposit application pointed out the following: **Jansen van Rensburg v Royal Borough of Kingston-upon-Thames UKEAT/0096/97**, that the test of "little prospect of success" is plainly not as rigorous, and it follows that a Tribunal has a greater leeway when considering whether or not to order a deposit.

42. In his submission Mr Laddie referred me to the strict conditions for a Settlement Agreement to have effect provided at section 203(3) of the Employment Rights Act 1996, which are that:

> *(a) The agreement must be in writing;*
>
> *(b) The agreement must relate to the particular proceedings;*
>
> *(c) The employee or worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an Employment Tribunal;*
>
> *(d) There must be in force when the adviser gives the advice a contract of insurance or an indemnity provided for members of a professional body covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice;*
>
> *(e) The agreement must identify the adviser; and*
>
> *(f) The agreement must state that the conditions regulating Settlement agreements under the Act are satisfied."*

43. As Mr Laddie pointed out, there is no doubt that the Settlement Agreement complied with the formalities demanded of a valid settlement agreement, however he asserted that the requirement that the claimant had received advice as to the terms and effect of the agreement and its effect on her ability to pursue her rights before an Employment Tribunal had not been provided; whether the declaration was false or a mistake or an oversight did not matter and that whether the advice had been given as required was a question of fact unrelated to what is said to have been done on the face of the relevant Agreement.

44. Mr Laddie argued that if the fundamental requirements of section 203(3) were not met the Agreement was void, and drew the distinction between section 203(3)(f) and section 203(3)(c); the obligation to state that advice has been given and the obligation to give that advice. He submitted that there was no authority in law for public policy considerations to supersede the clear, unambiguous wording of the statute; as was made clear in the **BT** case. He argued that it was quite clear from the documents and consistent with her evidence, that the claimant had been kept 'out of the loop' and that her input was limited simply to the information that she provided to Ms Lloyd, which Ms Lloyd then forwarded to Mr Town as Mr Town confirmed in his letter to Mr Rahman.

45. In respect of the strike out applications, Mr Laddie pointed out, supported by **Ezsias**, that whistleblowing detriment, akin to discrimination claims, are highly fact sensitive and argued that the respondent was trying to hive off individual allegations in the context of a campaign of victimisation spreading over years.

46. In respect of the Trainee Consultant Radiographer role, Mr Laddie argued that on two occasions this post had been advertised with very short time limits and whilst there might be a genuine explanation for this, the individuals who made those decisions were not present to give evidence. He pointed to inconsistencies in the "TRAC" record relied upon by Ms Nic Philib to show when the post was created and and approved and argued that if the claimant was right and the respondent was making it difficult for her to apply for the post, that would amount to a detriment giving rise to a justified sense of grievance.

47. In respect of the overtime pay, Mr Laddie submitted that there was a clear dispute of fact requiring an explanation from the manager, Miss Webb, as to why she did not approve the expenses within the normal timespan. This gave rise to a clear detriment in that the claimant was made to wait for a significant sum of overtime pay over the Christmas period.

**My Conclusions**

48. I allowed Ms Gould time to challenge the claimant's evidence in some detail. The claimant's evidence, however, was credible and I accepted it as an accurate and honest account and I found that she had never communicated directly with Mr Town, either orally, face to face or in writing. She had never met Mr Town and at no point received any advice as to the terms of the Settlement Agreement from him. I accepted her account of the limited information provided to her by Ms Lloyd; that the Union's solicitor would look over the original agreement, and that she did not see the Settlement Agreement until it was emailed to her by Ms Andrews on 13 April 2015. The email trail supports the claimant's account. It was clear that she gave basic details to Ms Lloyd, who passed them on to Mr Town, and he amended the Settlement Agreement without advising the claimant. I put no weight on Mr Town's statement in his letter to Mr Rahman as to what he 'would' have done. It is noticeable that Mr Town does not state that he did give advice and I agree with Mr Laddie that his reply on that point is vague and unsatisfactory.

49. I have some sympathy with the respondent's predicament as it was not aware that advice had not been given to the claimant by Mr Town. However, the terms of the statute are clear; advice was not given to the claimant by Mr Town as to the

terms and effect of the proposed agreement and in particular its effect on her ability to pursue her rights before an employment tribunal. Section 203(3)(c) ERA 1996 was not complied with, and so the agreement cannot not prevent the claimant from pursuing a claim in relation to the matters referred to therein.

50. As to Ms Gould's public policy arguments arising from any alleged misrepresentation of the position by the claimant and/or Mr Town, there was no legal authority or basis advanced which would supersede the clear unambiguous words of the statute, so far as the jurisdiction of the Employment Tribunal is concerned, and the Employment Appeal authorities referred to are clear: the statute is plain and the conditions have to be complied with for a settlement agreement to be valid in accordance with S203 ERA 1996. On this occasion one condition; provision of advice, had not been met.

51. On that basis the respondent's application to strike out all elements of the claim form relating to matters and allegations before 13 April 2015 is refused. The Tribunal has jurisdiction to determine all matters in the claim form, subject to any findings on limitation made at the substantive hearing of the claim.

52. Turning to the application for strike out/deposit in respect of the various matters, I have been asked to strike out and/or order deposits at a point in the proceedings where full disclosure has not yet been made, where the witness evidence has not been exchanged of the individuals against whom those allegations are made and based upon the evidence of the claimant and the respondent's Deputy Director of Workforce only. This is in the context of a claim of an ongoing course of conduct of a very serious nature involving ongoing detrimental treatment and victimisation of the claimant in many respects and blacklisting.

53. Whilst the respondent has advanced possible and arguable explanations for the issues of the delayed overtime pay and the advertisement of the Trainee Consultant Radiographer post, those explanations cannot be tested against the alleged protagonists as they are not here to give their explanations for their actions and their witness evidence has not been produced and I am not satisfied that these allegations have little or no reasonable prospect of success.

54. Similarly, in respect of the blacklisting allegations, the claimant has raised an arguable prima facie case and there is insufficient evidence before me to undermine that, to the extent that I could find little reasonable prospect and/or no reasonable prospect of success.

55. I am rightly reminded of the cautionary advice of the EAT in such fact sensitive cases that it may be better to hear all the evidence and decide the case in the round.

56. For these reasons the application to strike out the specified allegations contained in the claim form and/or order a deposit is refused.

**Directions**

57. The matter will now be listed for a one-hour telephone preliminary hearing. In advance of that hearing the parties will produce and use their best endeavours to

agree a List of Issues to be determined, and the parties will ensure that a fully completed case management agenda is provided for the Employment Judge.

Employment Judge Howard

Date 30th April 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

9 May 2019
FOR THE TRIBUNAL OFFICE