UK Employment Law Round-up

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Welcome to the second April edition. In this issue, we look at a recent decision by the EAT which provides guidance as to when an employee might be able to bring a claim for disability harassment. We also consider the approach that should be taken in determining the "principal purpose" of an organised grouping of employees in the context of a TUPE service provision change.

Following on from the case law on subject access requests considered in the last two editions of our employment law round-up, we look at another recent case which gives some practical guidance for data controllers to apply when dealing with subject access requests.

We also look at recent case law on the tricky issue of long-term sickness absence, and consider how employers should handle employee requests for extended time off to attend religious festivals.

Finally, we report on some welcome clarification on the impact of Acas early conciliation on the time limits within which claims must be brought in the employment tribunal, and consider a case which provides a warning to witnesses (particularly claimants) to take their oaths seriously when appearing in a tribunal.

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When is harassment not harassment? Guidance from the EAT

In the case of *Baker v. Peninsula Business Service Limited* [2017] UKEAT/0241/16, the EAT confirmed that an individual cannot succeed in a claim for disability harassment, unless they first prove that they have that protected characteristic.

The facts

Mr Baker was employed by Peninsula Business Service Limited (Peninsula) to provide legal advice and representation at employment tribunal hearings. From time to time, he handled cases privately, with Peninsula's prior permission. In 2014, Mr Baker told his managers that he was dyslexic, that as a result it took him longer than normal to do certain things (and so he might not be able to cover a specific case), and that he had medical evidence to show his dyslexia was a learning disability. This was supported by occupational health advice obtained by Peninsula, although Peninsula did not accept that Mr Baker was disabled.

Peninsula's director of legal services suspected that Mr Baker was "moonlighting", not working for Peninsula when he should have been, and/or attempting to set up in business privately. She ordered covert surveillance of Mr Baker to take place over a five-day period. The surveillance did not show that Mr Baker had been moonlighting, but did show that he had been spending time at his mother's house when he should have been performing work for Peninsula.

Peninsula invited Mr Baker to a disciplinary hearing, informed him that they had undertaken covert surveillance and provided him with a copy of the surveillance report. Mr Baker stated that knowledge of the surveillance had given him, amongst other things, sleepless nights and a sense of paranoia which were preventing him from concentrating on his duties, as a result of which he needed to go on sick leave. Mr Baker brought claims for disability harassment and victimisation based on the surveillance (which he said arose as a result of three protected acts). This included a claim that he had been victimised by the surveillance company, and that Peninsula was liable for this. Although Peninsula had not admitted disability, the tribunal did not make a finding on the issue. However, the tribunal found for Mr Baker in relation to both the harassment and victimisation complaints (including the claim for victimisation based on the actions of the surveillance company).

Peninsula appealed on the grounds that a claim for harassment could only succeed if Mr Baker was in fact found to be a disabled person for the purposes of the Equality Act 2010 (the Act). It was not enough that Mr Baker had asserted that he was a disabled person. Peninsula acknowledged that there were exceptions to the requirement to prove disability in order to bring a discrimination claim, but was of the opinion that no such exceptions applied here.

The decision

The EAT allowed the appeal. In respect to the harassment claim it commented that if the Act applied to individuals simply on the basis that they believed themselves to be disabled, this would allow an individual to claim harassment on the grounds of a false assertion, made in bad faith, that they have a disability. This could not have been intended and is contrary to the express wording of the Act.

The EAT also found that the tribunal had erred in allowing Mr Baker's victimisation claim, as it had not made the findings of fact necessary to properly reach the conclusion that he had been victimised. With regards to the complaint about the surveillance company's actions in putting Mr Baker under surveillance, the EAT found that Peninsula could only be held liable for the acts of the surveillance company, as its agent, if the agent had itself been in breach of the Act. On the facts the surveillance company knew nothing about the protected acts alleged by Mr Baker, and so it could not have subjected Mr Baker to surveillance because of those acts and accordingly could not have committed victimisation. As the surveillance company had not committed an act of victimisation, it followed that Peninsula could not be liable for such an act.

What is the practical impact of this for employers?

This case highlights the importance of the requirement to establish disability in order to bring a successful disability discrimination claim. The EAT's findings seem obvious on a literal interpretation of the Act (and, as Mr Baker was apparently an employment law expert himself, it is surprising that he pleaded the claims in the way that he did). However, employers should remember that case law has established certain circumstances where individuals can bring a claim for discrimination or harassment where they do not themselves have a protected characteristic. This includes, for example, where an individual is subjected to conduct related to a protected characteristic that they are wrongly perceived to have; and where an individual closely associated with someone with a protected characteristic suffers harassment related to that protected characteristic (even if they do not share it). Employers should be wary of this when dealing with employees to whom such circumstances might apply.

Service provision changes: determining the "principal purpose" of an organised grouping of employees

The EAT's decision in *Tees Esk and Wear Valley NHS Foundation Trust v. Harland and Others* [2017] UKEAT/0173/16 provides guidance on how the "principal purpose" of an organised grouping of employees should be determined when considering whether those employees should transfer under the Transfer of the Undertaking (Protection of Employment) Regulations 2006 (TUPE), in the context of a service provision change.

The facts

Under TUPE a service provision change will occur if a client: outsources work to an external provider; reassigns a contract to a new provider (as was the case in Harland); or brings such work back "in house", provided that certain conditions are met. In Harland, the condition at issue was the requirement that: *"immediately before the service provision change there is an organised grouping of employees situated in Great Britain* ***which has as its principal purpose*** *the carrying out of the activities concerned on behalf of the client"*.

Tees Esk and Wear Valley NHS Foundation Trust (the Trust) had provided care for an adult with severe learning difficulties on behalf of NHS South Tees Care Commissioning Group (the CCG) for a period of 10 years. The patient resided at a building which also contained flats housing other individuals who required specialist care. Initially the patient required seven carers at any one time and as many as 27 Trust employees were dedicated to providing this. Happily, the patient's conditions substantially improved so that from 2011 he required only 4-to-1 care, and from 2012 the team looking after him reduced to 11 Trust employees. These 11 were not dedicated to caring for the patient, but also cared for other service users resident in the same building. From February 2014 the patient's condition improved further, and in general he required only 1-to-1 or 2-to-1 care. During the night he rarely required assistance at all and, when he did, the night staff on duty at his building would attend to him. They would also attend to the other service users resident in the building when required. The patient's care continued to be split between the same 11 employees who had cared for him since 2012, but necessarily less of their time was spent in caring solely for the patient.

In 2014 the CCG put the contract for the patient's care out for tender and it was awarded to Danshell Healthcare Limited (Danshell), who took over the patient's care from January 2015. The Trust argued that the 11 employees who had cared for the patient since 2012 were assigned to the patient's care under the contract and that they would therefore transfer to Danshell under TUPE. Following consultation with the employees concerned the Trust determined that, in fact, only those employees who spent more than 75 per cent of their shifts (including nightshifts) caring for the patient should transfer to Danshell. This amounted to seven employees. Danshell accepted that there had been a service provision change, but disagreed that there was an organised grouping of employees which had the "principal purpose" of caring

for the patient (and argued that three full-time equivalent employees should be sufficient to provide the patient's care). However, Danshell still accepted the seven employees the Trust had identified as assigned to the patient's care. After the transfer some of the transferring employees resigned, others were made redundant, and only one continued to work for Danshell and provide care for the patient. A number of the affected employees brought claims in the tribunal.

At the preliminary hearing the tribunal determined that there was an organised grouping of employees put together to provide the services (i.e. care for the patient), which maintained its identity up until 5 January 2015. However, it held that as these employees undertook other work (and were not dedicated to the patient's care), by 5 January 2015 the "principal purpose" of the organised grouping had been diluted so that it was no longer the provision of the patient's care (and was, instead, the care of other service users), and that there was not, in fact, a service provision change for the purposes of TUPE.

The Trust appealed, primarily on the ground that the tribunal had taken the incorrect approach in determining the "principal purpose" of the organised grouping of employees in respect of the service provision change. The Trust's argument was that TUPE did not require the tribunal to consider the actual activities carried out by the relevant employees, but simply the Trust's intention at the time the grouping was organised. The Trust therefore argued that in considering the actual activities carried out by the organised grouping (rather than the continued purpose behind retention of the organised grouping), the tribunal had fallen into error.

The decision

The EAT dismissed this ground of appeal. It held that in order to determine the "principal purpose" of an organised grouping of employees in the context of a service provision change, the key question for the tribunal to answer was: "what did the organised grouping have as its principal purpose immediately before the service provision change?" The EAT observed that, whilst the activities performed and the intention behind the organisation of the grouping were both relevant factors to be considered in determining the "principal purpose" of an organised grouping, neither point was necessarily determinative. Acknowledging that determination of the "principal purpose" will turn on the facts of each case, the EAT held that, in this case as the purpose of the organised grouping had clearly changed over time, the tribunal had properly focused on the "principal purpose" of the organised grouping in the period immediately before the service provision change. The EAT found that TUPE does not specify how the "principal purpose" of an organised grouping of employees should be determined in the context of a service provision change. However, it acknowledged that it was not necessary for provision of the services to be the sole purpose of the organised grouping at the time of the transfer for there to be a service provision change, but provision of the services did need to be the dominant purpose. On the facts, it was permissible for the tribunal to reach the conclusion that, at the time of the transfer, the "principal purpose" of the organised grouping was the provision of care to other service users. The appeal was allowed, however, on other grounds (although this is not relevant here).

What is the practical impact of this for employers?

This case does not change the existing legal position. However, it provides useful guidance on factors that should be considered in determining the "principal purpose" of an organised grouping of employees. When determining the "principal purpose" of an organised grouping, the employer should consider whether the services which are transferring are the main or dominant purpose of the grouping at the time of the transfer. In circumstances where there are more employees than necessary carrying out the relevant services, or where the employees who form part of the organised grouping are carrying out other work, this might mean that their "principal purpose" is not provision of the services. However, this will depend on the facts of each case.

Court of Appeal provides further guidance for data controllers on handling subject access requests

In the first April edition of our employment law round-up we considered the Court of Appeal's decision in *Dawson-Damer v. Taylor Wessing LLP* [2017] EWCA Civ 74, which (amongst other things) concerned the relevance of an individual's motive in making a data subject access request (DSAR) under the Data Protection Act 1996, when considering whether compliance should be ordered. It seems that this is a hot issue at the moment and in *Ittihadieh v. 5 to11 Cheyne Gardens RTM Company Limited and Others* [2017] EWCA Civ 121, the Court of Appeal has considered whether a company was required to comply with a DSAR when a request was made for the purpose of fishing for information to use in litigation. The Court of Appeal's decision also provides useful guidance on the approach data controllers should take to handling DSARs and in particular on how far companies should go to ensure their searches in response to DSARs are reasonable and proportionate.

The facts

Mr Ittihadieh owned a flat at 5 to11 Cheyne Gardens. The non-corporate owners of other flats in the building (with the exception of Mr Ittihadieh and his partner) became members of RTM (a right to manage company affiliated to the building). Mr Ittihadieh and his partner later also became members, but their attempts to secure a position on RTM's board were blocked by the existing members. Mr Ittihadieh was apparently unhappy about this and alleged that RTM kept a file about him and that other residents were swapping and otherwise using personal information about him. Mr Ittihadieh made a DSAR to obtain those documents (which were personal data), and stated that he intended to bring claims of discrimination, harassment and victimisation. It would seem that there was in fact a file about Mr Ittihadieh, as following the DSAR 400 redacted documents were disclosed to him by RTM. A file of documents called the "Alireza file" was referenced in the disclosed documents, although it was not itself disclosed. Mr Ittihadieh sought disclosure of the Alireza file but this was refused by RTM. Mr Ittihadieh commenced High Court proceedings against RTM and its individual members, to obtain an order for disclosure of the Alireza file. The Judge refused to order its disclosure on the grounds that to do so would be disproportionate. The Judge said that RTM had already disclosed 400 documents, and the individual respondents were not data controllers against whom he could order compliance with the DSAR. The Judge pointed out that if any of the individual respondents

held personal data in a personal capacity, the domestic purposes exemption would apply. On that basis the claim against the individual members was dismissed.

It should be noted that a second case, *Deer v. Oxford University* was heard by the Court of Appeal alongside Mr Ittihadieh's appeal. The facts were, of course, different but the issues and the principles that came out of both cases were the same. We have not specifically considered Deer for the purposes of this summary.

The decision

The Court of Appeal agreed with the High Court, and refused to order RTM to disclose the Alireza file on the grounds that it would be "wholly disproportionate" to do so. The Court of Appeal also agreed that the High Court Judge had been right to dismiss the claim against individual members. The Court of Appeal also gave some useful guidance for data controllers about the steps that should be taken to comply with a DSAR.

Guidance

(i) Proportionality

A flat refusal to comply with a DSAR will not be justified. However, data controllers are not required to go so far to leave "no stone unturned": a proportionate search will usually fall somewhere in between the two.

(ii) Personal data

To constitute personal data, the data must either name or identify the individual, and must have them as its focus. The fact that a document contains a person's name does not necessarily mean that this will be personal data.

(iii) Motivation for the DSAR

When the purpose for making a DSAR is litigation, this does not invalidate the request. It will, however, be a relevant consideration for a court when determining whether further disclosures should be ordered.

What is the practical impact of this for employers?

It is helpful for employers, as data controllers, to have some further guidance on dealing with a DSAR. In particular, it is useful to have case law confirming that there is no need to take a "no stone unturned" approach to ensure a search is reasonable and proportionate as required under the Data Protection Act. Whilst this case does not change the stated position in *Dawson–Damer* that the fact that a DSAR is made for the purpose of litigation does not release the data controller from the obligation to comply with it, it is now clear that motivation can still be a relevant factor in determining whether compliance should be ordered.

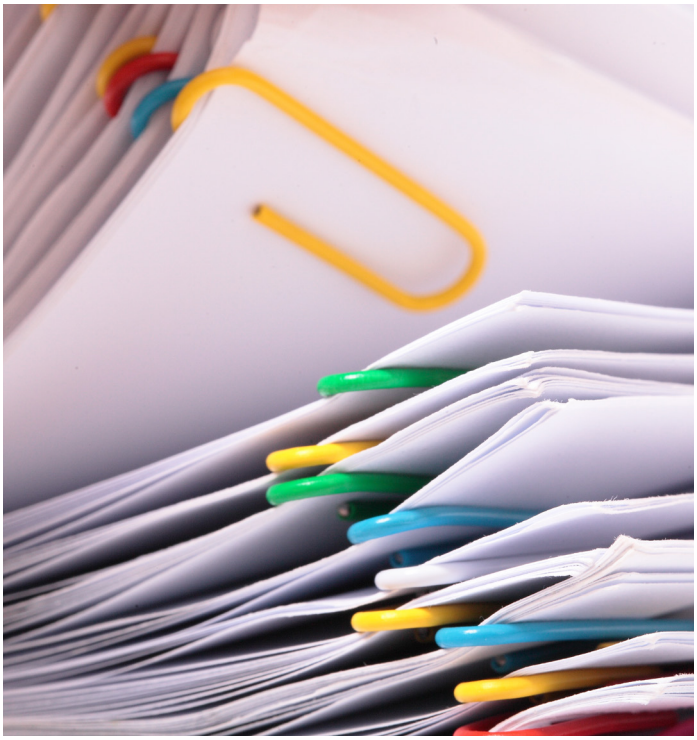
Employers should remember that the General Data Protection Regulation (GDPR) will come into force on 25 May 2018. Whilst this will not directly impact on this case, employers should start to prepare for the introduction of the GDPR now.

Medical evidence and dismissals following long-term sickness absence

In *O'Brien v. Bolton St. Catherine's Academy* [2017] EWCA Civ 145, the Court of Appeal agreed with the tribunal's decision at first instance that a teacher had been unfairly dismissed after more than a year's sickness absence, even though there was no immediate prospect of her returning to work. This decision was reached on the basis that the school had failed to properly consider medical evidence presented at the internal appeal hearing. The decision also provides guidance on the issues an employer should consider in long-term sickness absence cases.

The facts

Mrs O'Brien, a teacher and head of department at Bolton St. Catherine's Academy (the School), was assaulted by a pupil whilst at work. Mrs O'Brien initially returned to work following the incident but was shaken by it and felt that the School had not done enough to support her. Mrs O'Brien subsequently went on long-term sick leave and was diagnosed with stress at work and later with depression, anxiety and post-traumatic stress disorder.



During Mrs O'Brien's absence the School obtained two medical reports (in April and August 2012) which did not give any indication of a return to work date. After Mrs O'Brien had been absent for around nine months, the School invited her to a meeting to discuss her continued absence, and the medical evidence. Mrs O'Brien did not attend the meeting, instead saying she was too upset to do so. The School asked her to provide written information instead, including an indication of when she might be in a position to return to work. Mrs O'Brien was reluctant to provide the information requested, although did eventually inform the School that it was at that time "impossible" to predict when she might be in a position to return to work. Mrs O'Brien suggested that the School contact her GP for further information, which they did. The GP replied to say that the School should speak to Mrs O'Brien.

Unsurprisingly, the School became a bit frustrated about this and began its formal capability process. A meeting was held with Mrs O'Brien and her trade union representative at which Mrs O'Brien stated that she was receiving treatment for post-traumatic stress disorder, which would take place over seven sessions, and that she hoped to return to work by the end of April. However, Mrs O'Brien said that her therapist was not able to give a view on her return to work until Mrs O'Brien had completed the therapy. For its part, the panel at the capability hearing did not provide any information about the effect of Mrs O'Brien absence on the School. Following the capability meeting, Mrs O'Brien was dismissed. In reaching the decision to dismiss the School considered:

(i) the length of time off work to date with no substantive improvement in her condition;

(ii) that there was no prognosis indicating a likely return to work in the near future; and

(iii) its concern that the incident that led to Mrs O'Brien's condition might occur again in the future and (based on her comments) Mrs O'Brien may not be able to deal with this.

Mrs O'Brien appealed the decision to dismiss her. At the appeal hearing Mrs O'Brien presented a fit note which stated that she was fit for work. Mrs O'Brien also presented a letter from a psychologist stating that she could be expected to return to her previous self within 10 to 12 sessions of treatment. Mrs O'Brien told the appeal panel that she had now completed the treatment and was fit to return to work. The appeal panel was not satisfied that the evidence provided established that Mrs O'Brien was fit to return to work and upheld the decision to dismiss, following which Mrs O'Brien raised claims for unfair dismissal and discrimination arising from a disability.

At first instance, Mrs O'Brien's claims were successful, but the EAT subsequently upheld the School's appeal against the tribunal's decision. Mrs O'Brien appealed to the Court of Appeal.

The decision

The Court of Appeal, by a majority, preferred the employment tribunal's finding, that Mrs O'Brien's dismissal had been unfair and discriminatory. The Court of Appeal had accepted that Mrs O'Brien had been absent for a substantial length of time, and that there was no clear evidence as to when she would be fit to return to work. With that in mind, the Court noted that this was a borderline case. However, the Court of Appeal was critical of the School's failure to provide adequate evidence about the impact of Mrs O'Brien's absence on the School and its pupils. It also found that the School could not be expected to continue to "wait and see" indefinitely, but that it should have at least waited to get its own up-to-date medical evidence following the information presented by Mrs O'Brien at the appeal hearing.

What is the practical impact of this for employers?

This decision may seem harsh on the School given the length of Mrs O'Brien's absence, her lack of cooperation with the process, the evidence available at the time of dismissal, and the fact that the medical evidence presented at the internal appeal was not conclusive. However, the case highlights the importance of considering medical evidence at all stages when dealing with dismissals following long-term sickness absence.

Just because medical evidence is not provided until a later stage, does not mean that it does not require full consideration. Broadly speaking, when considering potential dismissals following long-term sickness absence, an employer should consider the adverse impact of the employee's absence on the business and carry out an evidential assessment of any disruption, including consideration of how this has been or might otherwise be dealt with. In a situation where an employee says at a late stage that they are fit to return to work, if the employer is not able to wait for their return they should consider the reasons for this and be prepared to justify them. This should be discussed with the employee at the capability hearing, and summarised in the dismissal letter. Employers should take into account new evidence which is put forward at an internal appeal, including medical evidence, and determine on the basis of this whether they might need to get their own further medical evidence before reaching or upholding the decision to dismiss.

Time off work and religious discrimination

In *Gareddu v. London Underground Ltd* UKEAT/0086/16, the EAT considered whether it was indirectly discriminatory, on the basis of religion or belief, for an employer to refuse an employee's holiday request which he said was for the purpose of attending religious festivals with his family in Sardinia.

The facts

Mr Gareddu challenged his employer's refusal to provide him with five weeks of leave as unlawful indirect discrimination on the grounds of his religion. He claimed that he needed the time off in order to participate with his family in ancient Sardinian religious festivals. London Underground had agreed that Mr Gareddu could take up to 15 consecutive days' annual leave (three weeks), but was not able to accommodate a longer request.

To succeed in a claim for indirect discrimination on the grounds of religion or belief, a claimant must show that the employer has applied to them an apparently neutral provision, criterion or practice (PCP) that would apply equally to others, but which puts or would put those who share the claimant's religion or belief at a particular disadvantage as compared to a person who did not hold that religion or belief, and that this cannot be objectively justified.

The decision

Both the employment tribunal and the EAT held that London Underground's refusal to provide time off was not indirect discrimination on the grounds of religion or belief. On the facts, the tribunal and the EAT found that the true reason for Mr Gareddu wanting five weeks off was not his religious beliefs and that there was little consistency in the particular festivals that Mr Gareddu attended - rather, his attendance seemed to depend on which of his family members were available on a particular day. However, the EAT confirmed that in principle attendance at festivals in Sardinia could be a genuine manifestation of religion or belief.

What is the practical impact of this for employers?

This case emphasises that employers should take a fair and balanced approach when considering employees' requests for long periods off work for religious reasons. The employer should look at each employee's request on an individual basis and determine whether there is reason to believe that the employee's activities seem like a genuine manifestation of faith. In this case, the tribunal and the EAT found that the employee was using religious belief as an alibi for a preferred family arrangement. However, on other facts, an employee may have a genuine reason for taking sustained time off for religious purposes.

Clarification of the extension of time limits following early conciliation

The effect of Acas early conciliation on extending the time limit for bringing an employment tribunal claim has been clarified by the recent decision in *Fergusson v. Combat Stress* (unreported). Under the relevant provisions of the Employment Rights Act 1996 (ERA), the time limit to present a claim can be extended in two ways, one of which is essentially a "stop the clock" provision where limitation does not run between the day after a prospective claimant contacts Acas (Day A) and the day on which the early conciliation certificate is issued by Acas (Day B). The ERA does not differentiate between cases where a prospective claimant begins early conciliation before their claim arises (for example, before the effective date of termination of their employment) and (the majority) who begin early conciliation after the relevant time limit has started to run.

The tribunals in *Chandler v. Thanet District Council* ET/2301782/14 and *Myers and Wathey v. Nottingham City Council* ET/260113/6/15 and ET/260113/7/15, interpreted the relevant provisions of the ERA to mean that the effect of the "stop the clock" provision is that the number of days in the period starting with the day after Day A and ending with Day B are added on to the limitation period, regardless of whether some of those days fell before the normal limitation period began.

In Fergusson the tribunal held that any days of early conciliation that fell before the date on which the relevant

limitation period began would not be added on to the limitation period. The tribunal reasoned that it was not possible to stop the clock for the purposes of the "stop the clock" provision, before the clock had even started. Further, the tribunal found that the purpose of the relevant provisions is to prevent a claimant being disadvantaged by having the usual time period for bringing a claim reduced because they engaged in early conciliation. Where a prospective claimant engages in early conciliation prior to the normal time limit commencing, there can be no such disadvantage.

Comment

Whilst all of the cases cited here were first instance decisions and so not binding, there has been some confusion about the effect of early conciliation on time limits in cases where early conciliation begins before the relevant limitation period. The outcome of *Fergusson* on this point appears to be the common sense approach, and reflects our understanding of the position prior to *Chandler*.

Strike-out for claimant who spoke to a journalist whilst under oath

Under the Employment Tribunal Rules of Procedure, a tribunal has the power to strike out a claim or response at any stage either on its own initiative, or following an application from another party for a number of prescribed reasons. The potential grounds for strike-out include cases of unreasonable conduct, and where it is no longer possible to have a fair hearing. Instances of strike out for one of the above reasons once a case reaches the tribunal are rare. However, in *Chidzoy v. British Broadcasting Corporation* ET/3400341/16 a claimant's claim was struck out by the tribunal on both these grounds.

The facts

Ms Chidzoy was a BBC journalist whose claim against her employer was listed for an 11-day tribunal hearing. The background of Ms Chidzoy's claim itself is not relevant here, save to say that it included a dispute over possible coverage of a story about the Dangerous Dogs Act, in the context of which a colleague had referred to Ms Chidzoy by email as "Sally Shitsu". Ms Chidzoy said this demeaned her on the grounds of her sex, but the BBC disagreed pointing out that Ms Chidzoy had said she would not object to having been called a terrier or a rottweiler.

Ms Chidzoy was sworn in and was cross examined by Counsel for the BBC over the course of two days. During breaks and overnight, Ms Chidzoy was reminded that she remained under oath and must not discuss her evidence with anyone.

On the third day, the tribunal adjourned for a comfort break, again reminding Ms Chidzoy that she should not discuss her evidence with anyone. Ms Chidzoy was, however, seen by Counsel for the BBC speaking to a journalist during the break. The word "rottweiler" was heard.

After the adjournment, the BBC's Counsel reported the incident to the Judge. Ms Chidzoy and her solicitor were unable to give a satisfactory explanation for what had occurred, and the BBC applied for the strike-out.

The decision

The employment tribunal heard evidence from all involved, and struck Ms Chidzoy's claim out in its entirety on the grounds that her conduct had been unreasonable, and that a fair trial was no longer possible. Most notably, the tribunal said that its trust in Ms Chidzoy and her solicitor was "irreparably damaged" by the incident, their failure to report it to the tribunal, and the evidence that they gave about it in response to the BBC's application. It was for this reason that the tribunal considered a fair trial was not possible. The tribunal considered whether the case should be heard afresh by a different tribunal, but found that this would be disproportionate given that Ms Chidzoy's evidence had almost been completed. The tribunal was also of the view that a new tribunal would be aware of the reasons for the case being re-heard, and so also be unable to place its trust in Ms Chidzoy or her solicitor.

Comment

The tribunal's decision here is unusual. The EAT's decision in *Sud v. London Borough of Hounslow* [2015] UKEAT 0156/14 provides previous authority for strike-out on the grounds that it is no longer possible to have a fair hearing, because a tribunal has lost trust in the claimant. However, it must surely be a regular occurrence that, for one reason or another, during the course of proceedings a tribunal decides that it does not particularly trust one party's version of events. Perhaps the key factor in Chidzoy was that the tribunal's trust in Ms Chidzoy's solicitor had been destroyed as well as its trust in the claimant herself. This case is interesting, and serves as a warning to all witnesses to take their oaths, and the tribunal's instruction not to discuss their evidence during an adjournment, seriously.

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www.dentons.com

Contacts

Virginia Allen
Head of Employment UK
D +44 20 7246 7659
virginia.allen@dentons.com

Sarah Beeby
Head of Employment UK
D +44 20 7320 4096
sarah.beeby@dentons.com

Michael Bronstein
Partner
D +44 20 7320 6131
michael.bronstein@dentons.com

Ryan Carthew
Partner
D +44 20 7320 6132
ryan.carthew@dentons.com

Gilla Harris
Partner
D +44 20 7320 6960
gilla.harris@dentons.com

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