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Case No: QB-2018-004632

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th October 2023

Before :

THE HONOURABLE MR JUSTICE BOURNE

- -

Between :

DORYCE YOVONIE	**Claimant**
- and -	
EAST SUSSEX HEALTHCARE NHS TRUST	**Defendant**

- -

Doryce Yovonie (Acting in person) for the **Claimant**
Rehana Azib KC (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing date: 10th October 2023

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Approved Judgment

This judgment was handed down remotely at 10am on 20 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE BOURNE

Mr Justice Bourne :

Introduction

1. The Claimant applies for permission to amend her claim. There are notices of application dated 4 June 2019 and 21 March 2023 but she has clarified that they are versions of the same application and the later version is the relevant one. There is a cross- application dated 31 January 2023 by the Defendant, seeking an order for the claim to be struck out if the Claimant's application succeeds and, in any event, a Civil Restraint Order ("CRO") against the Claimant.

2. The Claimant has sought to characterise the Defendant's application as a counterclaim which would require permission under CPR 20.4 but she is wrong about that. It is an application, not a counterclaim.

Background

3. It is necessary to summarise the procedural history. Where I refer to facts, these are facts found by previous tribunals and courts in the case.

4. From 6 September 2005 the Claimant was employed by the Defendant as a G grade nurse. Initially her pay was determined under what was known as the Whitley Council system. From 1 December 2005 the NHS Agenda for Change ("AfC") was implemented, bringing in a different scale which determined her pay and pension entitlements. The Claimant has alleged that she did not start at the right point on the new scale because of a failure to take into account her qualifications as an occupational health nurse and her experience in areas including infectious diseases, sexually transmitted diseases and tropical diseases. In 2013 there was a review of her performance and she complained about her treatment in respect of pay. From 2 October 2013 she took sick leave for work-related stress. An NHS process for redeployment was followed but she did not obtain a new post and was given notice of termination of her employment on 26 March 2014. After an 8 week notice period her employment terminated at the end of May 2o14, just over 9 years and 4 months ago.

5. The Claimant made a claim to the ET on 23 July 2014. She initially complained of unfair dismissal, discrimination on grounds of sex, race and disability and a failure to give her equal pay for like work. Most of her particulars of claim were concerned with discrimination and harassment in relation to her work, sick absence and dismissal. She also alleged that while she had started at the bottom of her pay scale and would not reach the top until September 2014, "my white Band 7 female counterparts reached the top of their Band 7 pay band many years before me with less qualifications and practical skills" and "my Band 7 white male counterpart with no Team Leader

responsibilities is on a Band 8 pay scale". Her claim also included an allegation of unlawful deductions from her pay.

6. In due course she withdrew the claims of discrimination on grounds of sex, race and disability (save in respect of equal pay). After a 4 day trial, the surviving claims were all dismissed on 15 June 2015. In particular the ET made a finding that she was correctly placed at Band 7 on the AfC scale and at the appropriate pay point. Her initial contract had, by mistake, slightly overstated her correct salary and at that point she was paid the correct amount rather than the higher amount, but in any event this did not affect her regrading under AfC. The ET also found that the comparators received pay appropriate to them because of their experience and qualifications.

7. The Claimant filed a notice of appeal to the Employment Appeal Tribunal ("EAT"), on 3 grounds: 1) failure to treat a unilateral variation of her pay as an unlawful deduction or breach of contract, 2) no evidence to support a finding that she had been offered a job in the redeployment process and 3) failure to apply the correct test for unfair dismissal. After a preliminary hearing before Singh J (as he then was), she was given permission to proceed on ground 1 only.

8. The appeal was dismissed on 25 February 2016 by Judge Eady QC (as she then was). She found that the ET made no error of law in finding that the Claimant had been paid the correct Whitley amount at the start and/or had impliedly agreed to a variation of her contract correcting the mistake, or in finding that she was placed at the correct pay point under AfC.

9. An application for permission to appeal to the Court of Appeal on two grounds was dismissed on 5 April 2017 by Burnett LJ (as he then was). He noted that the first ground reproduced ground 1 before the EAT but that none of her points cast doubt on the finding that she had been paid in accordance with her contractual terms. Ground 2 had not been allowed to proceed in the EAT and could not now be resurrected. He ruled that the application was "totally without merit", meaning that the Claimant could not renew her application at an oral hearing.

10. She then applied to the Administrative Court for permission to seek judicial review, challenging the lawfulness of the decision of Burnett LJ. On 14 August 2017 permission was refused by Warby J (as he then was). He explained that the Administrative Court, which is a sub-division of the High Court, does not have jurisdiction over decisions of the Court of Appeal. He certified the permission application as being "totally without merit", again meaning that the Claimant could not renew her application at an oral hearing.

11. Undeterred, on 15 January 2018 the Claimant issued a claim in the High Court. The Claim Form stated:

> "Brief details of claim
> During my employment between 6 September 2005 to 21 May 2014, unbeknown to me, the Defendant:
> 1) Breached my Contract of Employment;
> 2) Breached the Equality of Terms;
> 3) Breached the Sex Equality Clause;
> 4) Wrongfully Dismissed me and Terminated my Contract of Employment.
>
> I am therefore claiming for:
> a) Equitable damages for wages shortfall arrears backdated pensions, calculated in accordance with Agenda for Change job evaluation scores and backdated to my start date of 6 September 2005.
> b) Damages for past and future loss of earnings and pensions adjustments with interest.
> c) Declaration to expunge the stigma of my dismissal and damage to professional reputation.
> d) All Costs for bringing proceedings
> e) Interest pursuant to s35A of the Senior Courts Act 1981."

12. In her Particulars of Claim at paragraph 20 the Claimant said: "During disclosure process and ET hearing, I discovered from the Defendant's disclosure that the Defendant substantially underpaid me during my entire employment period of 8½ years with them". She again contended that she was wrongly placed at the lowest point on the G grade scale and that her AfC regrading disregarded her qualifications while others were too highly graded. She also alleged that one of her comparators, a Mrs Hunt, altered her contract to show her as a "Bank" nurse in order to facilitate her own application for a vacant post of Nurse Consultant, and that the Trust "misappropriated her certificates" so as effectively to allow Mrs Hunt to acquire her qualifications so that she could be matched to that job.

13. On 26 April 2018 the Defendant applied for the claim to be struck out or for summary judgment in its favour, and for costs, and for a CRO, contending that the issues of fact and law had already been determined against the Claimant and/or were outside the High Court's jurisdiction and/or were out of time.

14. That application was heard on 27 July 2018 by Judge Bidder QC, sitting as a Deputy High Court Judge. He set out the previous history, though he did not refer to the judicial review application or the order of Warby J. He stated:

> "10. She says that she did not realise that she had been completely misled about what her level wages should be until actually, as far as some of it is concerned, after she had appealed to the EAT. Although it seems to me that what she is saying is that she did understand there had been a misplacement of her salary range as of the Employment Tribunal but there

> was either a deliberate fraud by an immediate supervisor who herself was interested in getting a better job and, therefore, had a better job not to apply the proper scoring under the tool scales to be applied to her and that was deliberate fraud or, at the very least, concealment. That is therefore her effective claim against the defendants."

15. Judge Bidder considered the words "unbeknown to me" in the brief details section of the Claim Form, and said:

> "27. I should say, those words, 'unbeknown to me' is not entirely accurate. I accept from her that she did not know she had been misplaced on the scales as she now contends, but she could have discovered that for herself at the time because she could have worked out what her salary should have been knowing her qualifications and experience by reference to the Whitley Council scales and the AFC scales. It would, I accept, be unusual for an employee to have gone to the rather complex scales that were then available but these were published scales. She did not do so at that time but what she does say is that she was told that her salary was a certain salary and that was misleading. That she was told that in a letter which was written on the very same day and that the person who wrote the letter had made calculations which unquestionably should have put her above that scale in accordance with what she is now saying. What she is saying is, unbeknown to her, while she could have worked it out at the time she was misled by that letter and the statement of what her starting salary was not to bother to look and that the defendants breached her contract of employment."

16. The Judge decided:

> "29. Pausing there, all those issues were determined by the Employment Tribunal. They were not determined to the satisfaction of the claimant and she has explained to me why she says they should have got it right but did not. They were determined as essential facts in the way of determining the equality of pay claim, so these were not, if one could put it 'obiter facts'
> which were determined, they were essential facts on the way of determining the issue of equal pay. Therefore, either she is barred by res judicata in that she was paid equally, which seems to me to be the better interpretation, or the determination of the Tribunal estops her on the issue of whether she was rightly placed on the Whitley Council scale or the AFC scale from arguing that again in the High Court proceedings."

17. Judge Bidder went on to decide that the Claimant could have proceeded with the withdrawn complaints of race, gender and disability discrimination in the ET, so that it was an abuse of process to try to resurrect them in the new High Court claim, and that her equal pay claim had been determined in the ET so

that the Defendant now had a res judicata defence to it, and similarly the ET had rejected her claim for breach of contract in relation to her dismissal. He added:

> "37. She might have an argument that this was a case of fraud or deliberate concealment but my own judgment is that the evidence is insufficient to establish that. In my judgment, that does not matter because the issues as to whether she was paid less have been conclusively decided against her in the Employment Tribunal."

18. In short, although he recognised that the Claimant felt that the ET had been misled by witnesses, Judge Bidder found that the High Court claim disclosed no reasonable cause of action and/or was an abuse of process because every ground had already been decided against her in the ET.

19. Judge Bidder made an order that "the Claim shall stand struck out". He also ordered the Claimant to pay "the Defendant's costs of the action" summarily assessed at £15,000. He declined to find that the claim was totally without merit. He also refused to make a CRO, saying at [7]:

> "The basic level of civil restraint order will have absolutely no impact if I dismiss this claim and the next level up requires persistent findings of totally without merit and she is at least one finding of totally without merit away from a finding of persistence, as I understand and recollect the authorities."

20. There was no appeal against Judge Bidder's decision and order.

21. Then on 17 September 2018 the Claimant made a request to the ET for reconsideration of its original decision. She says that the request was refused on 6 March 2019.

The Claimant's applications

22. Around 10 months after Judge Bidder's decision, the Claimant drew up an application notice dated 4 June 2019. It was not sealed until 6 April 2022 and the application fee was not paid until September 2022. Then she served a revised application notice dated 21 March 2023. By the application she seeks to advance an "amended basis of the claim … to obtain a declarative judgement that East Sussex Healthcare NHS Trust Directly Discriminated against me because of my race, and to obtain Remedy Judgement under the Equality Act 2010 s. 119(4); 124 (2) (3) (6), and Interim relief".

23. The revised application includes 40 pages of particulars of the claim which the Claimant would like to pursue. These again set out the history of the Claimant's allegations relating to her pay. Her particulars state:

> "59. ESHT has admitted that my causes of actions accrued on 6 September 2005 and 12 December 2005. However, ESHT stated that my causes of actions for breach of contract were statute barred, as I should have brought my claims in December 2011; Judge Bidder's decision, paragraph 9. Pursuant to the Limitation Act 1980 section 32, this defence is baseless. Until the ESHT's admissions at the Tribunal hearing and in response to my High Court claims, I did not have knowledge at the time that I had causes of actions regarding my pay terms, as ESHT deliberately concealed all my pay details from me."

24. The Claimant's proposed particulars then refer to "post-employment discrimination" consisting of the Defendant's efforts to enforce their costs order. She also makes a claim for injury to feelings. The total value of the claim is now put by the Claimant at £3,502,111.60.

Submissions

25. Throughout this litigation the Respondent/Defendant has been represented by Miss Rehana Azib KC. I can summarise her submissions briefly. She submitted that the Claimant's application is misconceived and an abuse of process. Following the order of Judge Bidder there are no extant proceedings which could be amended. Even if that were not so, all of the Claimant's allegations are clearly met by defences of res judicata or issue estoppel and/or are time barred.

26. The Claimant has no legal background but told me that during this lengthy litigation, she has become more familiar with the relevant principles. She provided two lengthy but well expressed skeleton arguments and made focused and, for the most part, well informed oral submissions.

27. The thrust of the Claimant's submissions was that, throughout the period of her employment, the Defendant deliberately failed to place her at the right point on the pay scale, that it deliberately concealed its misdeeds from her and that it deliberately misled the Tribunals and the Court throughout all the litigation by maintaining that she had been correctly paid.

28. In oral submissions the Claimant went into more detail, adding a certain amount to her proposed pleading as summarised above. She said that when she was first appointed, her pay was fixed by reference to the Whitley Council scale but without reference to her additional qualifications which entitled her to extra allowances. When AfC was introduced and job evaluation took place, she says that the Defendant conducted a "matched job report" but concealed it from her and again failed to give her the correct pay. The report was disclosed in the ET proceedings. Having researched the meaning of the "Job ID code" which appears in the report, she claims that it shows that she was matched to

the post of Director of Infection Sciences at the salary grade of Nurse Consultant. She says that according to the code letters and numbers used, her salary pro rata (before reduction for part-time working) should have been £72,676 from 1 December 2005 instead of the £25,627 figure which in fact was used for her. She then refers to her "archived pay details" as disclosed by the Defendant in the ET proceedings, containing the phrase "payroll 51". She says that this refers to pay point 51 on the AfC scale which equates to a gross salary of £84,688. She goes on to say that the Defendant covertly maintained separate payroll accounts in her name which she did not know about, with the effect that she had two such accounts but was only paid from one of them. She claims that the Defendant in fact received the high pay to which she was entitled each month into an old payroll account which was concealed from her, but then paid her at a far lower pay point into the account which she knew about. Meanwhile, she says, her comparators were not treated in this way but received the same or higher pay despite being less well qualified than her.

29. To the extent that she makes allegations of fact which have not been made before (i.e. the further explanation of how documents reveal that she has been deprived of far higher pay), I asked her when she became aware of these facts. She told me that she learned them by carrying out further research on the pay documents in 2020 or 2021.

30. In answer to Miss Azib, the Claimant contends that there is merit in the proposed application and that the amendment is not barred by the order of Judge Bidder because it was just an interlocutory order. She says that her proposed claims are wholly or partly new, based on evidence and on research which she previously did not have time to carry out, and they are claims based on fraud by the Defendant. They are therefore not met by defences of res judicata or issue estoppel and, because the relevant facts were deliberately concealed from her by the Defendant, they are not time barred.

Discussion

31. I accept Ms Azib's submission that, following the order of Judge Bidder QC, there are no proceedings which can be amended.

32. The material parts of CPR 3.4 provide:

> "(2) The court may strike out a statement of case if it appears to the court –
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
> (c) that there has been a failure to comply with a rule, practice direction or court order.

> (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
>
> (4) Where –
> (a) the court has struck out a claimant's statement of case;
> (b) the claimant has been ordered to pay costs to the defendant; and
> (c) before the claimant pays those costs, the claimant starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out,
> the court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid."

33. By CPR 2.3(1) "statement of case" means "a claim form, particulars of claim where these are not included in a claim form, defence, counterclaim or other additional claim or reply to defence" and also includes any further information provided under Part 18.

34. Judge Bidder's order struck out "the Claim". In my judgment that meant the Claim Form and the particulars of claim provided with it. Following the strike-out, there was no surviving Claim Form and, therefore, no surviving claim.

35. Sometimes a judge just strikes out particulars of claim or part of them. In such a case it may well be necessary to make a "consequential order" under rule 3.4(3) dealing with the onward course of the litigation. But where "the Claim" was struck out, no further order was needed to bring the litigation to an end, and therefore it did not matter that the judge's order was made in response to an interlocutory application and not at a final trial. That is reflected in the reference in rule 3.4(4)(c) to a person bringing "another claim" after a strike-out. In this case it is consistent with the judge also ordering the Claimant to pay the "costs of the action". Since he assessed those costs, nothing further remained to be done other than the enforcement of the costs order (just as after any judgment, all that remains will ordinarily be enforcement of it).

36. It follows that the Claimant cannot be granted permission to amend because there is nothing to amend. Neither the Claimant nor, in response to a question from me, Miss Azib identified any case in which a party has been able to amend a claim which had ceased to exist.

37. Alternatively, subject to the Court taking a special approach to allegations of fraud (a subject which I address below), the new claim would plainly be an abuse of process. Even if the issues were not strictly res judicata, the new claim would fall foul of the rule in *Henderson v Henderson* (1843) 3 Hare 100 whereby, save in exceptional circumstances, parties cannot bring forward issues which could have been raised in an earlier claim. The application to

amend would fail for that reason, even if I am wrong about the effect of the order striking out the claim.

38. There is a third reason to refuse the application to amend. The application unequivocally advances the Claimant's allegations as a claim for discrimination (and/or harassment and/or victimisation) on grounds of race under the Equality Act 2010. However, the High Court has no jurisdiction to entertain a claim under the Equality Act 2010for discrimination, harassment or victimisation relating to employment (other than a claim for judicial review): see sections 113(1) and 120(1) of that Act. Meanwhile, despite a discussion of this point in Court, the Claimant has made no application to amend her application e.g. to frame her claim in breach of contract rather than discrimination.

39. The Claimant contends that the Defendant cannot rely on this point because it was taken, and then withdrawn, by the Defendant in the proceedings before Judge Bidder. However, it is a question of statutory jurisdiction, and jurisdiction cannot be brought into existence by a concession or an omission.

40. The application for permission to amend might also be defeated by a finding that there is a good limitation defence. That, however, is an issue which I need not resolve for two reasons.

41. First, the Claimant relies on section 32 of the Limitation Act 1980. That section provides that where any fact relevant to the claimant's right of action has been deliberately concealed from her by the defendant, time will not run until she has discovered the concealment or could with reasonable diligence have done so. The Claimant's latest allegations are based on the analysis of documents which were disclosed to her in 2015 at the latest. Her application does not clearly identify the facts which, on her case, were deliberately concealed. Nor does it specify when and how she discovered them. In view of my other findings it is not necessary for me now attempt to determine by when, with reasonable diligence, she could have discovered the facts on which she relies.

42. Alternatively, the Claimant relies on CPR 17.4. Under the latter rule the Court has a discretion to permit an amendment adding a new claim if it arises out of the same or substantially the same facts as are already in issue in the proceedings. Miss Azib suggests that because of the strike-out order, no facts are "already in issue" and she may well be right. Even if that is not so, she contends that the discretion should not be exercised to allow an amendment under that rule either because the limitation defence is reasonably arguable, or because there has been delay in making the application. Again, since the application fails for other reasons and since the issue under section 32 is unresolved, it is not necessary or proportionate to explore those questions either.

43. For the reasons set out above, Judge Bidder's order is fatal to the Claimant's case unless it is set aside or successfully appealed. I have therefore considered whether I can or should interpret her application for permission to amend as an application for either of those orders.

44. There is manifestly no application for permission to appeal out of time. Any such application would now have to be directed to the Court of Appeal.

45. Some procedural latitude is allowed to litigants in person, but an entirely creative interpretation of the Claimant's application as an application to set aside the strike-out order might carry that principle too far. Be that as it may, on the subject of setting aside Miss Azib drew my attention to *Takhar v Gracefield Developments Ltd and others* [2019] UKSC 13 [2020] A.C. 450. There the claimant had failed in a claim that unconscionable conduct by the second and third defendants had caused properties belonging to her to be transferred to the first defendant. Three years later she brought a new claim seeking to have the original judgment set aside on the ground that it had been obtained by fraud, relying on evidence that the second and third defendants had forged her signature. At Court of Appeal level her claim was struck out on the basis that this evidence could with reasonable diligence have been obtained for the original trial, but the Supreme Court allowed an appeal, holding that a lack of reasonable diligence did not make the second claim an abuse of process.

46. Lord Kerr, with whom a majority of the Court agreed, said at [55] that if fraud had been raised at the original trial but new evidence of it was now relied upon, or if a deliberate decision had been taken not to investigate fraud in the first claim, then the court would have a discretion to strike out the new claim. Lord Sumption said at [66] that the new claim would be allowed to proceed unless a deliberate decision had been taken not to investigate or use the evidence in the first claim. Lord Briggs said at [85-86] that any finding of abuse of process would involve the evaluation of a wide range of factors which might include the gravity of the fraud, the extent of any shortfall from reasonable diligence, the centrality of the fraudulent conduct to the outcome of the case, the amount of time which would be thrown away by setting aside the judgment and the apparent strength or weakness of the allegation of fraud, among others.

47. The Claimant has not asked me to treat her application as if it were an application to set aside, despite the discussion in Court, but I have nevertheless considered whether such an application could succeed. Although the way in which her case is now put has some similarities with *Takhar*, I do not consider that such an application could succeed. Leaving aside any question of whether such an application can be made under CPR 3.1.7 or should take the form of a new claim (as in *Takhar*), the approach of the majority in *Takhar* shows that

there is a discretion not to allow the new claim or application. I have no doubt that I would exercise that discretion in the Defendant's favour. The Claimant's case, now, is squarely based on something in the nature of an identity fraud being practised against her in which her proper pay details were used for the benefit of another employee. That case was advanced before Judge Bidder, which is why there is a discretion not to allow it to be advanced again. He decided that she was barred by *res judicata* or issue estoppel and also, at paragraph 37, that the evidence was insufficient to establish the fraud. She has since added further details to her basic allegation by carrying out research on the evidence which was disclosed to her years ago in the ET proceedings, but the basic allegation remains broadly the same. It was her decision not to carry out the further research at an earlier stage. Essentially she is seeking a second bite of the cherry and, as a matter of discretion, I would not have allowed that.

48. That conclusion would be all the clearer if Lord Briggs' multi-factorial approach were followed. In particular I would give weight to the far-fetched nature of the allegation that employees of an NHS Trust carried out something in the nature of an identity theft and, in the absence of any direct evidence of the fraud, the unlikelihood of a Court being persuaded to infer it simply from the codes on various pay documents. It seems extraordinarily unlikely that the Claimant was entitled to a far higher salary than the one she received and, at the time, was entirely unaware of that fact. I would also give weight to the fact that setting aside the judgment and allowing these allegations to proceed would unravel the High Court proceedings which were concluded in 2018 and would, at least, re-open matters which could have been litigated in the ET in 2015.

49. For all of these reasons, the Claimant's application or applications are dismissed.

Civil Restraint Order

50. I also find that the Claimant's applications are totally without merit. That is because she seeks to amend a claim which does not exist, in order to advance a discrimination claim over which the Court has no jurisdiction.

51. When a court dismisses an application and considers it to be totally without merit, CPR 23.12 requires it to consider whether it is appropriate to make a CRO. Where, like the Claimant, a party has made two or more applications which are totally without merit, a Limited CRO ("LCRO") can be made under paragraph 2 of CPR Practice Direction 3C. That order would prevent the Claimant from making any further applications in these proceedings without first obtaining permission. Where a party has "persistently" issued claims or made applications which are totally without merit, an Extended CRO ("ECRO") can be made under paragraph 3. That order would prevent the Claimant from issuing claims or making applications in the High Court or the

County Court "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made" without first obtaining permission. Where an ECRO would not be sufficient or appropriate, a General CRO ("GCRO") can be made under paragraph 4. That order would prevent the Claimant from issuing claims or making applications in the High Court or the County Court in any matter.

52. By its application the Defendant invites me to make a GCRO on the ground that it has been harassed by the Claimant's unending litigation for many years. Miss Azib describes her as a vexatious litigant who does not respect the courts and tribunals but continues to litigate maliciously, to harass the Defendant.

53. The Claimant asserts that she does respect the courts and tribunals and insists that she is just trying to vindicate her rights in good faith. She opposes the making of any CRO. She suggests that the Defendant has misled the tribunals and the Court on various occasions and should be barred from relief by its own conduct.

54. I have considered this question carefully. Although it is possible that this continued litigation is malicious, I am not satisfied that it is. Other judges who have made the decisions referred to above have commented on the Claimant's genuine sense of grievance.

55. Also, she has not launched claims on disparate subjects (or against disparate defendants). For that reason a GCRO is not needed.

56. Instead the Claimant has shown, in my view, an excessive degree of persistence in pursuing the contention that the Defendant underpaid her and discriminated against her. Unfortunately, even if there has been no cynicism, there has been a very regrettable lack of filter, demonstrated by what are now three TWM findings.

57. There have been only three such findings, which is a bare minimum for an ECRO. However, standing back, looking at the passage of over 9 years since the Claimant's employment, the failed ET proceedings including two attempts to appeal and a request for reconsideration, the misconceived judicial review application, the failed attempt to bring related claims in the High Court and their striking out as an abuse of process and finally this attempt at a second bite of the cherry in the High Court, I am satisfied first that she has persistently issued claims or made applications which are totally without merit, and second that it is necessary to make an ECRO in order to prevent the Defendant from having to devote further time and costs to these or any future proceedings related to the Claimant's employment and the resulting litigation. I do not accept that there has been any misconduct on the Defendant's side which could affect this decision. I also bear in mind that the effect of a CRO is not to stop the Claimant from litigating, but rather to oblige her to seek

permission before doing so. A LCRO would not provide sufficient protection, e.g. against a repeat claim. The ECRO will be in place for two years although an application can be made to extend it.

58. Miss Azib also suggested that because a CRO will not apply to the ET, I should grant an injunction in similar terms to a CRO restraining the Claimant from making any claim or application in the ET. The Claimant told me that she has no wish to bring these proceedings back to the ET and that she would consider it an abuse of process to do so. I am prepared to take her at her word. If she were to make any abusive application to the ET, then the Defendant could renew its application for an injunction.

Post-script

59. This judgment was circulated to the parties in draft, as is usual, for any clerical corrections. The Claimant responded with an email, not copied to the Defendant's representatives, attaching a document containing 21 pages of submissions and 24 pages of appendices in which she requested (1) permission to amend her claim in the terms considered at paragraph 38 above and (2) an order setting aside this draft judgment and the ECRO and that the Court should "use its discretionary powers to declare Judge Bidder's judgement, the Employment Tribunal (ET) judgement, and the Employment Appeals Tribunal (EAT) judgement, as null and void, as these judgements were obtained by fraud and collusion and by deliberately misleading the Courts".

60. That misuse of the facility to point out typographical errors (the nature of which was made clear in the email sent out with the draft judgment), and the lack of any merit at all in these further requests, and the Claimant's failure to restrain herself from repeating much of her previous submissions or from seeking to introduce yet further arguments and allegations, none of which appears to have any merit at all, serve to illustrate further the need for an ECRO in this case.

Conclusion

61. The Claimant's applications are dismissed. On the Defendant's application I make an ECRO which will be in force for 2 years from the date of my order.