EMPLOYMENT TRIBUNALS

Claimant: Mr. Salim Khan

Respondent: (1) Product Madness (UK) Limited

(2) Experis Limited

Heard at: by CVP from the Central London Tribunal **On: 30 January 2024**

Before: Employment Judge Woodhead

Appearances

For the Claimant: Representing himself

For the First Respondent: Ms G. Nicholls, Counsel (with witness Mr D Moore)

For the Second Respondent: Mr. A. Sutherland, Solicitor (with witness Mr E Price)

JUDGMENT

The judgment of the Tribunal is as follows:

1. The Claimant was not an employee or worker of the First Respondent in February/March 2023 or April 2023 ("**the Relevant Time**") pursuant to the Employment Rights Act 1996 ("**the ERA**") or pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("**the Order**"). As such the complaints of failure to pay notice pay, unlawful deduction of wages and arrears of pay and failure to provide terms and conditions of employment are dismissed because the Tribunal does not have jurisdiction to determine them.

2. The Claimant was not an employee or worker of the Second Respondent at the Relevant Time pursuant to the ERA or pursuant to the Order. As such the complaints of failure to pay notice pay, unlawful deduction of wages and arrears of pay and failure to provide terms and conditions of employment are dismissed because the Tribunal does not have jurisdiction to determine them.

Delay in issuing decision

3. I apologise to the parties that I have not got this decision to them before now.

THE ISSUES

4. These claims have had the benefit of two previous case management preliminary hearings (7 September 2023 (EJ Gidney) and 7 November 2023 (EJ Coen)). The claims and background were summarised by EJ Coen as follows:

> *(17) The claimant has brought claims for discrimination on grounds of religion or belief; discrimination on grounds of race; breach of contract, unlawful deductions from wages, notice pay, holiday pay; and failure to provide a written statement of terms and conditions of employment pursuant to section 1 of the Employment Rights Act 1996 against both the first and second respondents. This was the second case management hearing in the case. […]*

5. EJ Gidney helped the parties reach what is an agreed List of Issues (which I reproduce in the Appendix at the end of this document for ease of reference).

6. This hearing was listed for 30 January 2024 by EJ Coen on 7 November 2023 to determine the following questions:

   6.1 who is the correct respondent for the purposes of the claimant's claims for breach of contract, wrongful dismissal, unlawful deductions from wages, holiday pay, and his claim under section 1 of the Employment Rights Act 1996; and

   6.2 whether the claimant is an employee or a worker for the purpose of those claims (together "**the Preliminary Issues**").

7. I note here that it was not listed to determine any preliminary issue under the Equality Act 2010 ("**the EqA**").

THE HEARING

8. The claims were listed for a hearing of one day to determine the Preliminary Issues and I was presented with the following documents:

   8.1 A bundle of 281 pages

   8.2 A witness statement of Dane Moore (R1)

   8.3 A witness statement of Edward Price (R2)

   8.4 R1 Skeleton and Authorities – 20 pages

   8.5 R2 Skeleton Submissions – 4 pages

9. The Claimant had not prepared a witness statement as directed by EJ Coen. He said that he wanted a document appearing at pages 64-65 of the bundle to stand as his evidence. After I had taken some time to read key documents we heard the evidence of Mr Moore and then Mr Price. Each party was given the opportunity to cross examine witnesses that were not their own. With the consent of R1 and R2 I gave the Claimant time over a lunch break to consider

whether there was anything he wanted to add verbally to what was said in the document at pages 64 and 65. He affirmed the truthfulness of that document and then added to it verbally. I then heard submissions from each party (including with respect to how the claim should be further case managed to a full merits hearing). The Claimant did not materially add in submissions to what he had said in evidence.

10. Evidence and submissions did not conclude until well after 16:00 and there was then not time for me to reach a determination of the Preliminary Issues. We therefore moved into case management and agreed Orders for the preparation of the claim to a merits hearing which I listed for November 2024.

11. I listed a preliminary hearing for 11 April 2024 at 14:00 (one of the few dates of mutual availability) with the aim being for me to give oral judgment on the Preliminary Issues. I said that if I could I would issue written judgment before 11 April 2024 to avoid the need for that hearing. In the event I considered that it was preferrable for me to issue a written decision with reasons and so the hearing on 11 April 2024 did not take place.

THE LAW

Employment Rights Act ("**ERA**")

12. According to section 230(1) ERA an "employee" is "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.'

13. S.230 (2) ERA provides that a "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

14. S.230 (3) ERA provides that "worker" […] means an individual who has entered into or works under (or, where the employment has ceased, worked under) (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual. It provides further that and any reference to a worker's contract shall be construed accordingly.

15. S.230 (4) ERA provides that "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

16. S.230 (5) ERA provides that "employment" (a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and (b) in relation to a worker, means employment under his contract and that "employed" shall be construed accordingly.

17. Although one person can have two jobs with separate employers at the same time, case law affirms that an employee cannot usually be employed by two

employers at the same time on the same work (**Patel v Specsavers Optical Group Ltd UKEAT/0286/18**). Instead, it is possible for an employee to have a contract of employment with one employer, but to be seconded to work for a different employer or an agency worker relationship may exist.

Agency Worker Regulations 2010 (AWR)

18. The term Agency Worker is defined in regulation 3 of the Agency Worker Regulations 2010 as "an individual who—is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer; and has a contract with the temporary work agency which is—a contract of employment with the agency, or any other contract with the agency to perform work or services personally."

19. An agency worker can be an employee or a worker of the agency. It is also possible for relationships to exist where there are additional parties, often called intermediaries, involved. There is also the possibility of implying a contract between the agency worker and the end-user, but this is inconsistent with current case law (**James v Greenwich London Borough Council [2008] IRLR 302, CA**).

20. Although the starting point is usually the written agreements that are in place, the label that the parties may put on an arrangement is not determinative. It may be necessary to consider the reality of what happened in practice and look to other communications between the parties rather than rely on the contractual documentation entered into between the parties (**Uber BV and others v Aslam and others [2021] UKSC 5**).

21. In the Uber case, important considerations which led to the Supreme Court deciding that the documentation should not be relied upon included: (a) the documentation did not reflect the reality and appeared to have been put in place deliberately to avoid the Uber drivers gaining employment rights; (b) there was a significant imbalance in the commercial bargaining power of the respondent and the drivers; and (c) the drivers were precisely the individuals who needed basic employment law protections.

Contract formation

22. The parties did not address me on the principles of contract law or the law on claims for breach of contract and wrongful dismissal under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("**the Order**").

23. However, for any contract to have been formed, there are a number of essential components:

    23.1 an intention to create legal relations;

    23.2 offer;

    23.3 acceptance;

23.4 consideration; and

23.5 sufficient certainly as to the terms.

24. There is no legal requirement for an employment contract to be in writing. It therefore follows that there is no requirement for a contract to be signed by both parties to be binding.

25. Contracts of employment can be formed, varied and terminated through express agreement, whether in writing or orally. They can also be formed and varied through conduct. Acceptance of a new or varied contract can be implied where an employee has been issued with a contract and works under it, even though they do not sign and return it.

26. The test as to whether a contract has been formed, varied or terminated is objective. The tribunal must have regard to what a reasonable observer would think. That is not to say that the subjective states of the minds of the parties involved are entirely irrelevant. They are part of the overall factual matrix that needs to be considered.

Breach of contract and wrongful dismissal

27. The Order provides at Article 3 (Extension of jurisdiction) that Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if— (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine; (b) the claim is not one to which article 5 applies; and (c) the claim arises or is outstanding on the termination of the employee's employment.

28. In **Oni v UNISON Trade Union 2018 ICR 1111, EAT** the Honourable Mr Justice Soole held:

> Conclusions on the 1994 Order
>
> *35. In the absence of the parenthesis in Article 8(c)(i) I would have found this a straightforward issue to determine. Article 3(a) refers back to section 131(2). In the context of EPCA 1978, which in its original form related entirely to claims by employees against employers, the natural implication is that the Respondent to a claim for breach of 'any other contract connected with employment' must be the employer under the contract of employment. It would have required express language to widen the potential category of Respondents in any respect, i.e. even to an associated company of the employer.*
>
> *36. Whilst EPA 1978 was amended to include certain claims against trade unions and subsequent legislation enlarged the ET's jurisdiction in that respect, I do not accept that this affects the natural meaning of the critical words in Article 3, i.e. 'the claim of an employee [against his employer]'. By parity of reasoning, the natural meaning of 'claim of an employer' and*

'employer's contract claim' in Articles 4 and 8 is a claim against his employee.

37. Save in respect of the parenthesis in Article 8(c), the language of the Order is all supportive of and consistent with this interpretation. This includes Articles 2 (transitional provisions, which did not feature in argument), 3(b)(c), 4(b)(c) and 5. Whilst the excluded categories in Article 5(c)-(e) could extend to claims against non-employers, they are fully consistent with the relationship of employee and employer. Likewise Articles 7 and 8, with their contrasting reference to an 'employee's contract claim' and an 'employer's contract claim'. As to 8(b), I conclude that the reference to 'that employee' is simply, and for clarity, a reference back to the 'particular employee' who brought the claim.

38. However the parenthesis in Article 8(c)(i) is evidently consistent with the Appellant's construction of Article 3. On the face of it, those words envisage circumstances in which an employee may have brought a contract claim against a Respondent other than his employer. Furthermore if there is no jurisdiction to entertain any such claim against a non-employer, it is not easy to understand why it might be considered necessary to postpone the running of time (i.e. beyond the date when the employer received his employee's originating application) for the employer to present his contract claim against the employee.

39. However, the Order has considered as a whole and in the context of its source in the primary legislation. I am not persuaded that the parenthesis provides a sufficient counter to the construction which otherwise is compelled by the primary legislation and the rest of the Order. I am inclined to accept Mr Smith's explanation of the purpose of the parenthesis; but in any event am not persuaded that the insertion of those words within the time-limit provision for employer's contract claims has significant weight in the overall construction of the 1994 Order.

40. True it is that this means that there is no jurisdiction for the employee to bring a claim on a contract with an associated company of the employer e.g. as in the example previously cited. That may result in duality of proceedings and be a potential inconvenience. However, in circumstances where there is jurisdiction to pursue such claims in the ordinary Courts, I agree with the observations in Miller Bros that a restrictive construction of section 3(2) and the 1994 Order is appropriate. I do not accept Mr Coghlin's contention that Mr Recorder Langstaff was merely reciting the submissions to that effect of counsel for the employer.

FINDINGS OF FACT AND CONCLUSIONS

29. Having considered all the evidence, I find the following facts on a balance of probabilities. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.

Relationship between R1 and R2 and terms of engagement

30. I accept R1's evidence that they commonly use agencies, including R2, both for both direct hires and contingency workers (who come through umbrella companies) and that when providing contingency workers, the agencies either provide the payroll themselves or these services are provided via an umbrella company.

31. I accept that R1 has a Recruitment Services Agreement with R2 dated 2 September 2019 which provides (140):

> *Hiring of candidate; fee for services.*
>
> *"Product Madness will pay Provider [Experis] a Fee (as defined below) for any candidate presented to Product Madness by Provider [Experis] in accordance with this Agreement and hired by Product Madness within six (6) months of such presentation" [page 140].*

32. I accept Mr Moore's evidence that R2 contacts R1 and explains their requirements for new contingency worker positions. R2 then provides R1 with a list of candidates and their CVs. R1 then interviews the candidates and, if R1 wish to accept any of the candidates, R1 contacts R2 and asks them to make an offer. R2 then makes the offer to the candidate and responds to R1 to confirm if the offer is accepted. R1 then sends R2 a fee for the engagement of the candidate which includes any salary payable to the individual to be engaged and a markup for R2's services. R2 (or a third-party umbrella company engaged on their behalf, one such entity being a company called Giant) are directly responsible for paying wages to candidates who work under this arrangement for R1.

February/March 2023 proposal to engage the Claimant

33. I accept Mr Moore's evidence that he initially contacted R2 in February 2023 to explain that R1 needed a temporary Accounts Payable Analyst. The Claimant's CV was one of those provided to R1 by R2 and he was selected by R1. R2 was responsible for informing the Claimant and deciding what salary the Claimant would be paid and details of the assignment. R1 would just receive the "all in" rate that they were to pay R2 and R1 did not get a breakdown of how this is divided between the Claimant and R2 or any third party umbrella company.

34. I accept Mr Moore's evidence that R1 had initially intended that the Claimant start work in February 2023. However, as the colleague he was due to cover for then returned to the business, R1 had to cancel the start of the assignment (203 – 204). R1 explained that if a vacancy for a contingency worker opened up at a later date, they would like to take the Claimant on.

35. The Claimant did not advance evidence that he had a contract with either R1 or R2 in respect of his proposed engagement in February/ March 2023 and I find that the Claimant was neither an employee or worker of either the First Respondent or Second Respondent pursuant to the ERA or the Order. I note that the limited documentation included in the bundle in respect of this period suggests that the intention would have been for the Claimant to have contracted

through Giant (email from Experis (part of the Manpower group) 2 March 2023 – bundle 199).

April 2023 proposal to engage the Claimant

36. R1 did in the event have a further need for the Claimant and he was engaged at R1 between 24 April 2023 and 28 April 2023 (and I use the term 'engaged' in the loosest sense, for reasons that will become clear). I do not make findings of fact in respect of what happened during that period, the alleged discriminatory treatment complained of, the reasons for the assignment coming to an end or R1's assertions that the Claimant failed to perform work or training.

37. I accept Mr Moore's evidence that there was no intention for the Claimant to be on R1's payroll. The intention was that he would be paid a daily rate by either R2 or an umbrella company engaged by R2 (209 – 210). In this case I accept that the relevant third party umbrella company that R2 intended to use was Giant. The intention was that R2 would send R1 links to their external platform so R1 could approve and sign any time sheets for the Claimant. There was no intention for R1 to pay the Claimant directly.

38. Mr Moore contacted Gideon Wiredu at R2 on 28 April 2023 to inform R2 that R1 was ending the Claimant's assignment (227 – 229). I accept that Mr Moore of R1 then had a call with a Mr Wiredu of R2 and asked if R2 had paid the Claimant. He asked because R1 had not received an invoice to pay R2. I accept that R1 was willing to pay R2 if they received an invoice. Mr Moore followed up on this enquiry on 19 May 2023 by email (page 235).

39. I accept Mr Moore's evidence that R2 replied on 23 May 2023 to say as follows (page 236):

> *I just wanted to confirm that Salim Khan is fully closed down and terminated with Giant (our umbrella company) given he never signed their contract despite being chased several times from our contractor care, and also never submitting a timesheet. It was very generous of Pixel to offer to pay him for the week but we won't be processing.*

40. I also accept R1's submissions as follows:

40.1 the project schedule records R1 as the client (143);

40.2 the assignment schedule states that (157):

40.2.1 the umbrella company is Giant;

40.2.2 the employment business was R2;

40.2.3 R1 was the client

40.3 the Claimant was recorded as the worker.

40.4 R2 on 24 February 2023 contacted Giant with respect to the Claimant saying (194): "*new candidate for you [Giant] due to start on an Experis contract for 3 months from 6 March 2023 using yourselves [Giant]*".

40.5 in an internal email between R1 employees on 17 April 2023, Mr Moore stated, about the Claimant, "*this is a contractor paid a daily rate paid by an external agency and not on payroll*" (210).

41. In contrast to Mr Moore who had been personally involved in the engagement of the Claimant on behalf of R1, Mr Price, the witness for R2, had not had direct involvement in the engagement of the Claimant. Mr Price leads the team in which a Ms Drewry, a Mr Francombe and Mr Wiredu worked and who were the consultants involved in placing the Claimant with R1. Mr Price heads up the Jefferson Wells recruitment business which is a wholly owned brand of Experis which, in turn, is part of the Manpower group.

42. I accept Mr Price's evidence that, in the case of the proposed engagement of the Claimant, it was deemed to be inside the IR35 tax rules and that meant that the Claimant could perform the assignment to R1 by signing up through an umbrella company. I accept that R2 has three such umbrella company providers being Giant, Paystream and Advance. I accept Mr Price's evidence that the applicable agreement between the Manpower group (including R2), and the umbrella company Giant provides (160):

> *2.2. The Umbrella Company will procure that Services will be undertaken by the Worker. The Worker will be employed by the Umbrella Company and Off-Payroll is not in scope of this Agreement. For avoidance of doubt, all Workers shall be engaged by the Umbrella Company on a PAYE basis.*

43. Although Mr Price was not directly involved in discussions with respect to the Claimant, I accept his evidence because he explained that he had read through the documentation and had spoken with the individuals who put forward the Claimant. On the basis of Mr Price's evidence and because the Claimant accepts that R2 sought to engage him via the umbrella company Giant, I find that the proposal discussed verbally between R2 and the Claimant was that the Claimant would be 'onboarded' through the umbrella company Giant. This is also consistent with what appears to have been proposed when the Claimant's engagement was discussed on the first occasion earlier in the year.

44. I accept on the balance of probabilities Mr Price's evidence that the Claimant did not indicate to R2 that he did not want to be engaged under an umbrella company and that he also did not indicate that he wanted to be a direct employee of R2. I accept Mr Price's evidence that if the Claimant had made that clear then R2 would simply have set him up on a PAYE basis as their own employee.

45. As regards the earlier proposed engagement of the Claimant with R1 there was an email from Mr Francombe to the Claimant or 23 February 2023 which said (185):

> *HI Salim,*
>
> *It was nice to speak with you today.*
>
> *Further to our conversation, presuming your Experis timesheet is submitted and approved by our weekly deadline (each Monday @ 5pm), we will Giant you on our weekly pay run each Wednesday and Giant will in turn pay you by close of business on the Friday of the same week.*
>
> *They often do turn their payments round a little faster, so it could even be Thursday pm or Friday am.*
>
> *We have partnered with Giant for many years and they provide an exceptional service to our professional contractor workforce.*

46. The Claimant replied on 21 March 2023 to ask if there was an update on the start date. He did not query the arrangement proposed.

47. An email from Giant to R2 of 21 April 2023 says (189-190):

> *Thanks for the call and email regards Salim.*
>
> *He has spoke to the team this afternoon and advised that he would like to register online (Wouldn't therefore go LIVE today).*
>
> *I have asked the team recall to support onboarding as it is time sensitive.*
>
> *It may also be worth you dropping Salim a call today to advise this is required before commencement Monday.*
>
> *I will check again around 17:00 to check status.*

48. Then later in the day (189) R2 replied to Giant:

> *I understand that he has now registered online, can you please confirm and if all ok push his contract out asap (or let us know if anything else is missing!)*

49. An email from Giant to Mr Francombe and Mr Wiredu of 26 April 2023 (188) said:

> *Are you aware of Salim Khan starting the assignment?*
>
> *Unfortunately, still not onboarded with giant and non-responsive to calls and messages.*

50. An email the next day was of the same tenor (187).

51. I find that there was no contract (whether verbal or written, express or implied) between the Claimant and R1 on or around April 2023. There was no intention to create legal relations between them, no offer or acceptance of terms and, to the extent that there was any understanding between them, it was insufficiently clear to have any contractual force. The Claimant was not a worker or employee of R1

pursuant to the ERA, nor was he an employee pursuant to the Order. The intention was for him to be an agency worker with R1 as the 'hirer' of the purposes of the AWR.

52. I also find that there was no contract (whether verbal or written, express or implied) between the Claimant and R2 on or around April 2023. The nexus between R2 and the Claimant was, arguably, closer but as with R1, there was no intention to create legal relations between them and no offer or acceptance of terms and, to the extent that there was any understanding between them, it was insufficiently clear to have any contractual force (particularly as regards the terms relating to the rate of pay and the tax treatment of such pay). The intention of R2 (and as they understood it at the time, the Claimant) was that the Claimant would become an employee of Giant but that did not come to pass because the Claimant did not accept the terms of engagement with Giant. He did not then say he wanted to be employed on a PAYE basis with R2 and so no contract of that nature was concluded between the Claimant and R2. The Claimant was not therefore a worker or employee of R2 pursuant to the ERA, nor was he an employee pursuant to the Order.

53. I do not consider that the Claimant became an agency worker pursuant to the AWR because no contract was formalised between him and a temporary work agency (whether R2 or Giant). I do not accept the Claimant's contention that he had an agreement with R2 that he would be working for R2 and that he would be under R2's payroll as an agency worker. The contemporaneous documentation does not support this.

54. The Claimant himself argued that R2 "kept forcing him to sign up with their umbrella company". I accept his evidence that he refused to work through the umbrella company (Giant) but do not accept his argument, on the contemporaneous evidence, that he refused this arrangement from the outset.

55. It is clear from the Claimant's evidence that he never became employed by the umbrella company, Giant. I accept the Claimant's evidence that he was unhappy about the terms on which the umbrella arrangement would work and because of employer costs that, under the arrangements, would be deducted from the Claimant's day rate of pay.

56. Clearly is it unsatisfactory that this leaves the Claimant without worker or employee status with either R1 or R2 having had a period of engagement with R1 (albeit I make not comment on what work he actually did or did not do during that time) when the intention was that he be an employee of Giant and could, had he made it clear, have been an employee of R2 on a PAYE basis. However, this arises out of the fact that the Claimant started the assignment before he had agreed the basis on which he would be performing the assignment.

57. I was not asked to determine the Claimant's status under the Equality Act and that was not one of the matters set down for determination at this hearing.

Equality Act 2010

58. As I have said, the hearing on 30 January 2023 was not to determine any preliminary issue arising under the Claimant's EqA complaints. However, my findings as set out above, may have implications for those complaints which the parties may want to consider by reference to the List of Issues.

_____

Employment Judge Woodhead

Date 2.05.24

Sent to the parties on:

3 May 2024

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For the Tribunals Office

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

Appendix

THIS IS THE CASE SUMMARY AND LIST OF ISSUES AS DOCUMENTED BY EJ GIDNEY AT A PRELIMINARY HEARING ON 7 SEPTEMBER 2024

The Complaints

25. The Claimant is making the following complaints:

25.1 Discrimination on the grounds of religion or belief;

25.2 Discrimination on the grounds of race;

25.3 Notice pay, unlawful deduction of wages and arrears of pay.

25.4 Failure to provide terms and conditions of employment.

The Issues

26. The issues the Tribunal (limited to liability at this stage) will decide are set out below.

Employment status

27. Whether the Claimant was an employee, worker or independent contractor and thus whether the Tribunal has jurisdiction to determine the Claimant's discrimination complaints pursuant to either s41 or s83 **Equality Act 2010**.

Direct Discrimination on the grounds of race (EqA s9 & s13)

28. The Claimant is a Pakistani Muslim.

29. On 28th April 2023 did the Claimant's line manager, Sukhjit Kaur, say/do the following things:

29.1 What time zone the Claimant was in and whether he was Pakistani;

29.2 Pakistanis are useless people;

29.3 Are you one of those stupid Pakistanis;

29.4 She did not want a Pakistani on her team;

29.5 Ask the Claimant to return his laptop;

29.6 Dismiss the Claimant;

29.7 Tell the Claimant they would find a reason not to pay him notice.

30. Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no

material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who he says was treated better than he was. He relies on a hypothetical comparator.

Direct Discrimination on the grounds of Religion of Belief (EqA s10 & s13)

31. The Claimant is a Pakistani Muslim.

32. On 28th April 2023 did the Claimant's line manager, Sukhjit Kaur, ask the Claimant whether he was a Muslim?

33. Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who he says was treated better than he was. He relies on a hypothetical comparator.

Breach of Contract

34. Did this claim arise or was it outstanding when the Claimant's employment ended?

35. Did the Respondent do the following:

35.1 Fail to pay the Claimant pay for the remainder of his 1st fixed 3 month contract when it was terminated on 6th March 2023?

35.2 Was that a breach of contract?

35.3 How much should the Claimant be awarded as damages?

36. Did the Respondent do the following:

36.1 Fail to pay the Claimant pay for the remainder of his 2nd fixed 3 month contract when it was terminated on 28th April 2023?

36.2 Was that a breach of contract?

36.3 How much should the Claimant be awarded as damages?

Statement of Terms and Conditions (ERA s1)

37. When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars?

38. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38

of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

39. Would it be just and equitable to award four weeks' pay?