



EMPLOYMENT TRIBUNALS

Claimant: Dr M Czeh-Bhardwaj

Respondent: The Chancellor Masters & Scholars of University of Oxford

Heard at: Reading **On: 8, 9 10, 11 October 2024 and Tribunal deliberations 21 October 2024**

Before: Employment Judge Gumbiti-Zimuto
Members: Mrs D Ballard and Mr J Appelton

Appearances
For the Claimant: In person
For the Respondent: Miss J Danvers, counsel

RESERVED JUDGMENT

The claimant's complaints of direct discrimination, indirect discrimination on the grounds of race (nationality) and unlawful deduction of wages are not well founded and are dismissed

REASONS

1. In a claim form presented on 19 May 2023 the claimant made complaints of direct and indirect discrimination on the grounds of race, she relied on her nationality. The claimant is part Hungarian and part German. The claimant also made a complaint that the respondent had made unauthorised deductions from her wages. The respondent denied complaints and defended the claim.
2. At a preliminary hearing on 3 January 2024, the issues to be decided in the case were set out in a case management summary. In respect of the complaint of direct discrimination the question posed is: "Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely paying her since 2017 at a lower rate on the salary scale (E64) than someone with her experience could expect?"
3. In respect of the complaint about indirect discrimination the provision criterion of practice that is alleged to have placed the claimant at a substantial

disadvantage is addressed is recorded in the following way: “Treating a German Certificate of Completion of Training (“CCT”) as less than equivalent to the training and experience required to function as an NHS Consultant for the purposes of applying the Respondent’s clinical pay scales.”

4. In respect of the claim for unauthorised deduction of wages claim it is recorded: “The claimant contends that the wages ‘properly payable’ to her were equivalent to an NHS consultant salary of £80,000 per annum. The respondent disputes that wages at that level were ‘properly payable’ and avers that the claimant was paid in accordance with her contractual entitlement.”
5. At the start of the final hearing the claimant made an application to amend the claim to add two new allegations of direct race discrimination.
 - (i) That on 17 August 2020 Stella Keeble told the claimant that the claimant’s maternity pay would be paid to her from her research grant award and when the claimant explained that the position stated was wrong, on 18 August 2020 Stella Keeble corrected this.
 - (ii) That between 21 February 2023 and April 2024 Stella Keeble failed to agree to fully extend the claimant’s contract until Feb 2026.The respondent objected to the application to amend the claim.
6. The claimant states that these incidents occurred when she was pregnant and about to go on maternity leave, a time when she was feeling vulnerable because she had a high-risk pregnancy. The claimant does not allege that there are any specific comparators to support her case but will say that she was told about other fellows who were treated differently to her and were treated more favourably.
7. The claimant accepts that complaints arising around the time she was taking maternity leave were discussed at the preliminary hearing on 3 January 2024 before Employment Judge Wyeth when the matters set out in para 5 of case management summary were recorded (p43). The claimant says that she either misunderstood what was being said by Judge Wyeth or alternatively that Judge Wyeth misunderstood what she said about this matter.
8. In its response the respondent points out that claimant presented her complaint on 19 May 2023, the allegation about discussing the extension of the claimant’s contract straddles the periods before and after the presentation of the complaint. The allegation about maternity pay predates the presentation of the complaint. The respondent points out that neither of the matters appear in the original claim (p14). The first mention of these matters is in further information provided by the claimant on 30 November 2023 (p38).
9. The respondent points out that the matter addressed by Judge Wyeth made it clear that he understood the claimant’s case to be that she was relying on the matters referred to in paragraph 5 as background and not as stand-alone allegations of discrimination. Following the preliminary hearing the parties were sent a record of the preliminary hearing which contained the direction that if the parties thought that the issues were not properly recorded, they

should write to the employment tribunal within 14 days (p44). The respondent points out that the claimant did write in to the employment tribunal but did not make any mention of this issue (p61).

10. The respondent says that these are new claims made in respect of matters arising prior to claim being presented. They introduce new areas of enquiry for the Tribunal. The new claims are now all out of time. The complaints about matters arising in August 2020 would have been about 6 months out of time if included in the original claim form.
11. The respondent further says that the complaints are “*hopeless*”, and that having discussed the matters at length in this hearing the claimant does not set out a basis on which it could be said that there is evidence from which the Tribunal could conclude that the alleged detriments were due to her nationality. The allegations are not serious matters: one was an error that was corrected the following day, the other matter was a reasonable position taken in circumstances when Stella Keeble could not have known the extent to which grant funding remained available to justify the extension of the claimant’s contract and that when the matters were established the contract was in any event extended.
12. The respondent says that there is no prejudice to the claimant if the application to amend is refused because there is no prejudice to the claimant if she is not able to pursue a hopeless case. The respondent is prejudiced because the respondent has to deal with these matters “*on the hoof*” they have not been addressed in the respondent’s witness statements because they were not understood to be complaints being pursued by the claimant. A postponement to address the matters would be disproportionate in respect of time and costs.
13. The Tribunal reminds itself that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The nature of the amendment in this case is making entirely new factual allegations. The claims are all now being presented outside the time-limit for the presentation of complaints, and it would be necessary to extend the time limits for the presentation of complaints. We note the timing and manner of making the application and that these matters had been considered in the course of a previous hearing where they were described as background by the claimant. There will be a need for new factual issues to be addressed by the respondent.
14. The Tribunal concludes that the claimant’s application to amend the claim should be refused. We recognise that the claimant is a litigant in person. However, we note that the background matters which give rise to the application to amend were subject of discussion at a previous preliminary hearing and the claimant stated that the matters were background. The Tribunal note that the claimant says that either she misunderstood what the Judge told her at the previous preliminary hearing or that the Judge misunderstood what she was saying. Even if this is right, we note that the claimant did not take the opportunity to correct the error even though there

was a direction in the case management summary that made it clear that the claimant could correct any errors.

15. We have tried to stand back and consider the claimant's allegations as a whole in this case and asked whether these additional complaints form part of the essential background to the case such that it would not be of any significant prejudice to the respondent to have to address because they are to be dealt with in any event. Our conclusion is that they are not. The additional complaints have appeared at the last minute and are new allegations. They do not appear in the claimant's claim forms nor could they reasonably have been understood to have been included in the claim form until the claimant made the application to add the claims in these proceedings.
16. For these reasons we therefore refuse the claimant's application to amend the claim.
17. The claimant gave evidence in support of her own case, the respondent relied on the evidence of Dr Stella Keeble, Carole Eaton and Rosemary Payne. The witnesses all provided witness statements that were taken as their evidence in chief. The claimant and Rosemary Payne both provided substantial addendums to their statements. The Tribunal was also provided with a trial bundle containing 779 pages of documents. From these sources we made the following finding so fact.
18. In 2016 the claimant was a clinical postdoctoral fellow in molecular stem cell laboratory of IMTB/UKM, Münster. The claimant had License in General Paediatrics (2013), was a member of the Royal College of Paediatrics and Child Health (IA+IB (2013) and II (2015)), she had subspecialty training in paediatric haematology and oncology and bone marrow transplantation at the Children's Hospital, Charité, Germany (2013-2014) and subspecialty training in paediatric haematology and oncology and bone marrow transplantation at the Children's Hospital, UKM, Germany (2014-2016). In February 2017 the claimant received her certificate of completion of training (CCT) in paediatric haematology/oncology.
19. The claimant started the application process for the Cancer Research UK (CRUK) Clinical Scientist Fellowship in 2016. It is a criteria of the Fellowship that the candidate has either obtained the CCT and holds a consultant status or has a national training number and at the time of the award, she has a clear plan for obtaining the CCT.
20. The MRC Weatherall Institute of Molecular Medicine ("WIMM") is part of the University of Oxford. The WIMM houses researchers from different departments across the respondent's Medical Sciences Division.
21. The claimant had chosen WIMM as the host institute for her research. Staff from the WIMM assisted the claimant in the preparation of her application to CRUK, on the application being successful the WIMM would be responsible for the administration of the budget. As part of that the WIMM would pay the claimant's salary from the Fellowship award.

22. The claimant's research proposal in respect of leukaemia was to be taken forward at WIMM where the claimant was to have Professor Irene Roberts as her clinical mentor. The claimant was to spend 20% of her time doing clinical work in the John Radcliffe Hospital where Dr Kate Wheeler, consultant paediatric oncologist, was the clinical lead in the Paediatric Haematology and Oncology Department.
23. Prior to starting this process the claimant had discussed with, among others, Professor Joseph Vormoor of University of Newcastle who had trained at the same university as the claimant in Germany and he had recommended the claimant starting in a "*Post-CCT Clinical Fellow position*" for a period of about 12 months so that the claimant could adapt to the NHS system.
24. The claimant had similar discussions with Professor Roberts and Dr Wheeler who had stated that they gave their support to the claimant's application for a Fellowship. Dr Wheeler also stated that: "*I would anticipate her starting in a clinical capacity as a post-CCT fellow for approximately a year or 18 months prior to it being appropriate for her to switch to a Consultant position. To be in a clinical post as a post-CCT fellow would be necessary for Dr Czeh as there are many aspects of working in the UK that Dr Czeh would need to become accustomed to, including language, the organisation of the NHS and UK clinical practice.*"
25. The claimant's Fellowship grant was calculated and applied for on the basis that she would have a consultant position after the initial period of a year to 18 months.
26. Once the claimant's grant had been awarded she was to enter into a contract of employment with the respondent. The staff at the WIMM were responsible for dealing with the administration of this.
27. Usually, a clinical researcher will already be employed by the NHS as a doctor or a dentist when they join the respondent. They will provide WIMM with a copy of their NHS payslip, advise of their incremental date for the purposes of ongoing pay increases and the WIMM HR will then work out where they fit on the respondent's clinical pay scales. The respondent's pay scales mirror NHS doctor and dentist pay scales in order to provide pay parity and ease transition to and from the NHS.
28. The claimant, a German qualified doctor, had not worked in the NHS before she started working for the respondent. The normal process of mirroring her NHS pay could not apply. WIMM staff contacted Professor Roberts for advice regarding how the claimant should be costed in terms of grade and scale, she advised that the claimant should be considered on the academic clinical lecturer scale at ST7.
29. However, as the claimant was not going to be working in an official NHS specialist training post, she was not eligible for an Academic Clinical Lecturer post. Appointments to Academic/Clinical Lectureships at the Respondent are

on the grade A salary scale and were made centrally by the Medical Sciences Divisional Office, not departmentally.

30. Further advice was taken from the Medical Staffing Manager at OUH regarding where the claimant would be placed on the NHS pay scale. The response was that based on the claimant's CV she would be at £45,757.
31. The respondent's salary scale for clinical researchers who did not have NHS consultant contracts was E64. A salary of £45,757 placed the claimant at E64.9.
32. The claimant was contacted on 21 February 2017 and told that her basic salary would be £45,757 and starting grade was E64.9. It was also stated that she was expected to get an NHS consultant contract during the duration of the fellowship, and it would then be re-costed at consultant level.
33. The claimant replied asking for an explanation why this was as it was not what she had been told: *"I am very much surprised since the information you have sent is not really what Josef Vormoor told me. Of course I can understand and even did not want to start as a consultant, however it sounds for me very very unsure if it could ever been a consultant salary during the 5 years."*
34. There followed further correspondence between the claimant and WIMM in which it was stated to the claimant that she could not be paid consultant level until she was appointed to a consultant post. There was an email exchange with Carol Eaton, this related to the contents of the claimant's contract of employment, in which the claimant said: *"I would definitive ask that there is an official agreement in the contract concerning not only transient time, but that a definitive change is planned latest 12-18 months for a consultant position ...this is how I have applied for and awarded, it was not E64.9"*. In this exchange the claimant was asking that the contract state that she would be a consultant in 12-18 months.
35. Carol Eaton's reply to the claimant stated that until there is an NHS consultant post for the claimant WIMM can only offer her a contract on E64.9 basis; if the claimant *"subsequently hold a consultant position in the UK"* then she would move to E82 grade and a new contract issued.
36. The claimant then wrote to Carol Eaton asking that: *"like in the grant, also in the contract the situation could be exactly explained ("a consultant position is planned in 12 months according to agreement in the grant and this contract is planned to be subsequently changed in a planned period of time of 12 months" ...), so at least something safety clausal on my side in the only one official contract. Yes, of course, there is a confirmation letter from Dr Wheeler that she supports to switch for consultant level in 12-18 months, however this is not a contract."* The claimant was asking that it be explained in the contract that it was planned that she would be a consultant in 12 months time.
37. Carol Eaton's response was as follows:

“Of course, you must action as you feel appropriate and make the appropriate checks so that you are fully informed. My understanding is that it was clearly agreed that you would commence on grade E64.9 salary and hopefully obtain a consultant post (E82 grade) within 12 - 18 months. At the point where you have a consultant post, of course you would be paid at consultant level and a new contract issued. My understanding is that the grant award has been costed/funded accordingly to this plan, so therefore the funding for the higher salary is available. I appreciate this is a huge change/decision for you, however, I thought that at this stage all had been agreed and understood in terms of the grant and it was rather the detail of processes in the UK, such as tax, that perhaps needed further explanation. Perhaps you should discuss with Claus as he was very involved at the application stage and he maybe able to offer more reassurance to you than I seem able to?”

38. The claimant's concern was about the transition from the initial 12 to 18 month period to consultant she wanted some protection to ensure that she was a consultant in that time. In her further correspondence the claimant stated that it was agreed that she would have E64.9 for “*12-18 months but not for 5 years*”.

As I've said previously though, when as planned you move into a consultant post once you are in the UK, then of course you would be paid at the appropriate consultant level and we would issue you a new contract at grade E82. I realise this may seem difficult because of the element of uncertainty, but it would not be unusual for us to issue a new contract due to a change of clinical grade (I've done this previously for clinical staff who have moved from E64 to E82 whilst working at the WIMM), so I think there needs to be an element of trust that we will do so, on the proviso of course, that the OUH NHS provide a consultant post to you. ... Irene has advised me that you are permitted to work as a consultant because of the EU regulations which mean your qualifications are recognised here as a Paediatric Oncologist but not as a Paediatric Haematologist (which is what Irene is), as you have to undergo extra training which the oncologists don't have. Irene advised *'The main issue is that the actual training is different so you will need some 'sub-consultant' experience first to help you to fill in gaps in your training.'* I assume this correlates with the 12-18 months transition period that you have mentioned and agreed with CRUK?

39. The claimant was provided with the contract and signed it on the 25 September 2017, the contract provided that the claimant would be paid at E64.9 with annual increment date 1 April each year.
40. The claimant commenced the 5-year CRUK Clinical Scientist Fellowship on 1 November 2017 at WIMM.
41. The claimant commenced clinical work at the John Radcliffe Hospital in the paediatric oncology department from December 2017, clinical work accounted for 20% of her working time. The role into which the claimant was placed at John Radcliffe Hospital was an Honorary position which was created for her. The claimant's understanding of the position at this time appears to have been that after the appropriate period of time a Honorary Consultant role would be created for her.
42. The claimant now observes that she immediately noticed that the team had a limited interest in her, that there was no integration plan for her with a clear task or job plan with indicated milestones to reach the consultant position. The claimant contacted Professor Roberts "*immediately and regularly to change to another centre like GOSH*"¹. The claimant describes the problem as not only the lack of a plan for her progression to a consultant position but the fact that she had nothing to do, the claimant says that she was being deskilled by the inactivity.
43. By 16 May 2018 Dr Wheeler said the OUH paediatric oncology department would not support submitting an honorary consultant application for the claimant at that time.
44. The claimant, in the summer of 2018, contacted Professor Vora at GOSH. Professor Vora told the claimant that she was permitted to work as a paediatric haematologist in the United Kingdom. Dr Kate Wheeler and Professor Roberts agreed that the claimant could join the paediatric haematology team at John Radcliffe Hospital moving away from the paediatric oncology team and from January 2019 the claimant joined the paediatric haematology team. Following the move the claimant found the same failings as she had met in the paediatric oncology team.
45. The claimant again made contact with Professor Vora and in August 2019 a potential opportunity for the claimant to join the team at GOSH as an honorary consultant emerged. While there were discussions about this possibility there was no progress achieved between February 2020 and October 2021.
46. In the meantime the claimant's relationship with her mentor Professor Roberts came to an end because the claimant perceived a conflict of interest arising from her position as a clinical research fellow at WIMM.
47. The claimant provided WIMM administration staff with a letter from GOSH which supported the claimant in an application for an honorary consultant

¹ GOSH = Great Ormond Street Hospital

position in the Late Effects Clinic of the Paediatric Haematology Department of GOSH.

48. The position that was being maintained by the director of WIMM, Professor Higgs was that the responsibility for securing an honorary contract with an NHS Trust lay with the individual Fellowship holder, i.e. the claimant. The respondent did not convene a formal appointments panel that would be necessary for appointment to a consultant role. Until the claimant obtained a honorary consultant role the claimant could not be provided with a clinical academic contract at consultant level.
49. The claimant fell pregnant and made enquiries about maternity pay. In August 2020, WIMM wrongly informed the claimant that it did not intend to give the claimant maternity pay, and told her that this should be paid from her research grant. This was wrong and it was later clarified that the claimant was entitled to maternity pay during her maternity leave. In September 2020 the claimant took maternity leave.
50. When the claimant returned from maternity leave in 2021, there was a new director at WIMM, Professor Patel. He sought clarification on the position in respect of setting up an Appointments Advisory Committee (ACC) for the claimant in circumstances where the claimant would be appointed to a honorary consultant role at GOSH.
51. Following a meeting convened at the claimant's request on 3 September 2021 it was established that the respondent could jointly convene an honorary consultant appointment panel where the clinical sessions would be at GOSH and for GOSH panel member to attend the ACC set up by the respondent. This was the opposite of what the respondent's position had been previously.
52. There followed some communication involving the respondent, GOSH HR and the claimant with a view to setting up an ACC for the claimant. However, in June 2022 GOSH informed the claimant that they would not continue with the application process as the claimant had been too long out of the clinical activity to meet the requirements to function as an honorary consultant.
53. In January 2023 the claimant became a clinical fellow in the community paediatrics team in John Radcliffe Hospital.
54. In February 2023 CRUK offered a 2-year extension of the Fellowship to enable the claimant to complete the project, initially WIMM resisted offering only a 1-year extension. However, after the intervention of CRUK the claimant was given an extension of Fellowship up to February 2026.
55. Following a further period of maternity leave the claimant returned to resume her Fellowship in February 2024, her Fellowship was extended to 2026, and the claimant continued to be employed as an honorary clinical fellow position at John Radcliffe Hospital.
56. In May 2023 the claimant submitted her claim to the employment tribunal.

The law

57. Section 123 Equality Act 2010 (EA) provides that claims to the employment tribunal must be brought within the period of 3 months starting with the date of the act which the complaint relates. The employment tribunal must consider any early conciliation period. If the relevant act is an act extending over a period, the relevant date is the end of the period. Where it is considered just and equitable the period may be extended.
58. Section 136 EA provides that if there are facts from which the employment tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. This does not apply A shows that A did not contravene the provision. Guidance on the application of this provision is set out in the cases of Igen v Wong [2005] ICR 931 and Madarassy v Nomura International PLC [2007] ICR 867.
59. Section 13 EA provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B Less favourably than A treats or would treat others. On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.
60. Section provides that a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
61. A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a relevant protected characteristic of B's. The provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if A applies, or would apply, it to persons with whom B does not share the characteristic; it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it; it puts, or would put, B at that disadvantage; and A cannot show it to be a proportionate means of achieving a legitimate aim.
62. It is for the claimant to show that there has been group disadvantage. This may be done from statistical or other tangible evidence, or it may be inferred from the fact there is a particular disadvantage in the individual case. Guidance is given in the Essop and others v Home Office (UK Border Agency) [2017] ICR 640 on the correct pool for consideration when determining whether there is group disadvantage.
63. It is for the employer to prove that the PCP is justified.
64. Section 13 Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory

provision or a relevant provision of the workers contract, or the worker had previously signified in writing his agreement or consent to the making of the deduction.

The claimant's submissions

65. The claimant refers to the respondent's failure to provide her with a response to her subject access request made on the 30 April 2024 until the 30 August 2024. The claimant says that this subjected her to disadvantage in terms of proving her case. The employment tribunal process is not the same as the subject access request which can be made pursuant to UK GDPR under, a scheme which is under the auspices of the Information Commissioner.
66. The claimant also contends that the respondent's actions of keeping her on a low salary meant that she couldn't afford legal representation. The Tribunal recognise that the claimant is not only a litigant in person, but she is also a foreign national. We bear this in mind when considering the way that the case has been presented by both parties.
67. The claimant refers to the role of Professor Irene Roberts, paediatric haematologist, who was for a while her clinical mentor. The claimant points to the advice she gave to the respondent and draw attention to the errors she made in considering the status of the claimant's qualifications from Germany. She was wrong in stating that the claimant could not work in the United Kingdom as a paediatric haematologist and could only work as a paediatric oncologist.
68. The claimant points out that the GMC consider a doctor with a German CCT with appropriate knowledge and skills is entitled to work as a consultant. The claimant is entitled to be placed on the specialist register and is entitled to apply for consultant roles in the National Health Service.
69. The claimant points out that the respondent's HR team did not get advice from appropriate bodies such as the GMC or Royal College of Paediatrics to confirm whether the claimant can work as a consultant in paediatric haematologist
70. The claimant points to what she considers to be Professor Roberts's conflict of interest arising from another post- doctoral fellow under her supervision.
71. As a WIMM clinical research fellow the claimant was entitled to parity with the NHS pay scale. The claimant contends that she should have been on the NHS pay scale comparable to a specialty doctor and not on E64 which was for a doctor in training. The claimant points out that as she had her CCT she was not a doctor in training.
72. The claimant states that Professor Roberts' conflict of interest made her an inappropriate person to consult on these issues and that additionally, is not an HR person.

73. The claimant points to other people e.g. Professor Roberts' post-doctoral fellow who was on E66 when the Tribunal was told these were historic grades.
74. The claimant seeks to make a link between the lack of support for the claimant in pursuing the opportunity at GOSH to the fact that Professor post-doctoral fellow was also interested in a role at GOSH and was duly appointed to a position at GOSH.

The respondent's submissions

75. The respondent provided the Tribunal with written submissions which have considered.

Direct discrimination

76. The claimant describes herself as part Hungarian part German and complains of discrimination because of race. For the purposes of the Equality Act 2010 race includes nationality, ethnic or national origins.
77. The claimant's CCT from Germany meant that she was eligible to seek appointment to a consultant role in the United Kingdom.
78. The discussion that took place between the claimant and various other parties, including professor Voormor at Newcastle University, Professor Irene Roberts, Dr Wheeler led her to conclude that on commencing her fellowship research there should be a 12–18-month period when the claimant worked at below consultant level.
79. The claimant was placed in an honorary role created for her at John Radcliffe Hospital as part of the arrangements for the research fellowship. The expectation of the parties was that this would be for a 12–18-month period in a role below consultant level.
80. The claimant's expectation was that after 12-18 months she would be appointed into an honorary consultant role created for her.
81. The WIMM administrators' position is that once the claimant was provided with an honorary consultant contract by the clinical employer, they would issue her with a new contract in which she would be paid at consultant level.
82. Dr Wheeler and Professor Roberts initially expected the claimant to work below consultant level for 12-18 months. This was so that the claimant could become accustomed to many aspects of working in the UK, including language, the organisation of the NHS and UK clinical practice before she could progress to consultant level. While it is not explicitly stated we consider it is more likely than not that the original intention was that such an honorary consultant position would have been created for the claimant at John Radcliffe Hospital.

83. The position of Dr Wheeler and Professor Roberts in our view changed and they formed the view that the claimant was not working at consultant level. Regrettably this was never explained to the claimant or any steps taken that might have allowed the claimant to address the concerns of Dr Wheeler.
84. The claimant became concerned about the way her clinical work was progressing from early on. She felt that there was no plan for her, she was not making clinical progress, and her skills underused: where as she had been used to seeing 25 patients a day in her previous role, in John Radcliffe she was only seeing just 2.
85. It became evident to the claimant that she would not get an honorary consultant role at John Radcliffe so she started to look for positions elsewhere (GOSH and Royal Marsden) she also began enquiring about transferring her fellowship to another institution, away from the respondent.
86. As the claimant failed to secure a consultant role her pay remained at E64 grade and did not go up to E82 (consultant) Grade. That is the reason for her pay to remaining at the lower rate.
87. This policy was applied by the WIMM administration to the claimant in the same way as it would have been applied to any other clinical fellow in the same position as the claimant.
88. We have to determine whether the respondent subjected the claimant to the treatment of paying her since 2017 at a lower rate on the salary scale (E64) than someone with her experience could expect?
89. The respondent concedes that the claimant was paid less than she expected. While *"the fact of this allegation is accepted by the respondent"* the respondent does not accept that the claimant's expectations were reasonable and the question *"whether the claimant's salary was 'reasonable' or not, or whether her experience means that her salary could have been calculated differently by the NHS or Respondent, is not the matter with which this Tribunal is concerned."* The issue for the Tribunal is whether the decision about the claimant's rate of pay was materially influenced by the claimant's nationality.
90. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators?
91. In the list of issues, the claimant is stated as relying on a hypothetical comparator. During the hearing before us the claimant did refer to actual comparators. The claimant compared her treatment to that of AR and EL. The claimant states that these individuals are British trained. AR studied in India and EL in Greece. There is no evidence as to the nationality of these individuals. The claimant has not put forward evidence that her comparators were British.

92. AR was appointed to a different role (academic-related) by a different department. She was only paid at consultant level when she became an NHS Consultant.
93. EL was initially appointed on the same grade as the claimant (E64). She was then appointed on an 'A' Grade when she applied for and obtained an Academic Clinical Lecturer role. When EL then obtained a research fellowship she was re-employed at Grade E63.
94. Section 23 (1) EA provides that there must be no material difference between the circumstances relating to the claimant's case and the cases of AR and EL. However, there are material differences in the cases of AR and EL to the claimant's case.
95. Has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic? Our answer to this is no.
96. The respondent's policy for Clinical Research Fellows is that their salary on appointment should match that which they would receive if employed directly by the NHS. The claimant was not entering from NHS employment so there was no NHS contract to match her salary to. The university did not have a policy to cover this eventuality. Stella Keeble sought input from the NHS on the correct salary level.
97. The University grade which was used for Clinical Research Fellows like the claimant who did not have an NHS consultant contract was E64. The grade point that matched the suggested salary of £45,757 was E64.9 and this was the grade at which the claimant was placed.
98. The claimant has not proved primary facts from which the Tribunal could conclude that the difference in treatment was because of the claimant's nationality, ethnic or national origins. The respondent's explanation for the difference in treatment was a non-discriminatory reason. There is no evidence that Stella Keeble was materially influenced by the claimant's Hungarian / German nationality. In issuing the claimant's contract Carol Eaton was not influenced by the claimant's nationality and made it clear that she would issue a contract on E82 when the claimant secured a consultant role.

Indirect discrimination

99. The PCP that the claimant relies on is set out at 8.1.1 of the case summary namely: "Treating a German Certificate of Completion of Training ("CCT") as less than equivalent to the training and experience required to function as an NHS Consultant for the purposes of applying the respondent's clinical pay scales."
100. That is not a PCP that was applied by the respondent.

101. What the respondent did was use the NHS salary scales to determine pay for Clinical Research Fellows. Where clinical fellows had a previous NHS contract this was translated into the WIMM pay scale.
102. Where the clinical fellow did not have an NHS contract WIMM would place them on E82 if they had consultant status or E64 if not having consultant status. The WIMM required the claimant to be appointed to an honorary consultant role by the NHS partner in this case OUH before they moved the claimant to E82. The effect of such an approach was that the claimant was substantially disadvantaged as a clinical fellow in respect of her pay.
103. The E64 grade pays up to £55K (in 2021) and E82 grade starting at £83K (in 2021). This operates to the substantial disadvantage of the claimant because she cannot be placed anywhere other than on E64 until she attains honorary consultant status.
104. Did the application of the PCP put other people who are part Hungarian / part German at a particular disadvantage compared to those who are not? Did it put the claimant at that disadvantage?
105. The particular disadvantage relied on by the claimant is “that people not from Britain are more likely to have a CCT and as a result be placed lower on the respondent’s salary scale than an NHS consultant.
106. The claimant has provided evidence of this: people from both the UK and elsewhere in Europe have CCTs. There is no evidence that it is where an individual’s CCT is obtained that determines their salary or whether they are appointed by the NHS as a consultant. Whether a consultant role in the NHS is obtained will depend on various factors such as the relevant skills and experience.
107. Section 23 EA requires that where a comparison is made for the purposes of section 19 EA that the material circumstances are the same as the claimant, the pool for comparison would therefore have to include people from Britain who had their CCT but had the same skills and training as the claimant and / or did not have an NHS consultant contract. In in this instance those people would also not have been paid at E82 by the respondent, so there is no particular disadvantage to those of the claimant’s nationality.
108. The claimant was not placed at this disadvantage because she had a German CCT, it was the fact that the claimant did not have a consultant contract that she was not placed on E82 and instead placed on E64.
109. The claimant’s claims of direct discrimination and indirect discrimination are not well founded and must be dismissed.

Deduction of wages

110. There is no evidence produced that shows that the claimant was subjected to a deduction from her wages.

Some Concluding remarks

111. The Tribunal members make the following further observations. The following matters appear to the Tribunal members to be matters about which the claimant could reasonably feel to be aggrieved:

1. The respondent did not properly engage with the claimant's query before contract regarding her moving from a position below consultant to a honorary consultant position. The claimant expected such a role to be created for her it was not made clear that would not be the case until much later when the position of Dr Wheeler towards the claimant's suitability for consultant status appears to have changed from the claimant moving to consultant in 12-18 months to the claimant not being supported for consultant status.
2. When the claimant begins working for the John Radcliffe there was no proper plan in place for her development in respect of clinical practice so her progress to consultant status was hampered.
3. When the claimant begins to raise the lack of progress to consultant status the respondent does not engage with the claimant in a way that allows her to understand that Dr Wheeler and Professor Roberts did not consider that the claimant was suitable to move to honorary consultant status.
4. When the claimant goes on to seek alternative avenues such as at GOSH, the WIMM did not support the claimant to set up an AAC or understand what their own responsibility might be in setting up a ACC that would allow the claimant to potentially advance to the honorary consultant post that was for a time available to her at GOSH.
5. The claimant has not correctly identified the PCP applied by WIMM. They applied a PCP that required a non-NHS contracted doctor to be placed on appointment to NHS pay scales. If not at consultant level in the NHS pay scale she would inevitably be placed at E64. There is a huge gulf between E64 and E82 and while the respondent has other pay scales points (e.g. E65 and E66) on which other clinical fellows had been placed these were not applicable to the claimant.

Approved by:
Employment Judge Gumbiti-Zimuto

Date: 27 January 2025

Sent to the parties on: 4/2/2025

N Gotecha
For the Tribunals Office

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