

IN THE MATTER EMPLOYMENT TRIBUNAL

CASE NUMBER:  
2361814/2013 TBA

BETWEEN

Mr Len Campling

V

~~Ministry of~~ Secretary of State for Justice

First Respondent

and

~~Sheila Proudlock~~

~~Second Respondent~~

and

Phil Cosgrove

~~Second~~ Third Respondent

and

Public & Commercial Services Union

Third ~~Fourth~~ Respondent

~~Lavinia O'Connor~~

~~Fifth Respondent~~

and

Phil Madelin

~~Sixth Respondent~~

and

~~Steve Blackmore~~

~~Seventh Respondent~~

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Particulars of Claim

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- 1) The Claimant has been employed by the First Respondent since April, 2002. He is employed as a Bailiff. He is also the elected London Regional Chair and London Branch Secretary of the Public and Commercial Services Union (PCS). He also chairs the London regional trade union side Health & Safety committee. Up until September 2012, the Claimant had been on 100% facility time for a period of 7 years. The Claimant is Jewish by race and religion and entitled to the protection of the Equality Act 2010.

- 2) The First Respondent is the Ministry of Justice, a public body which is governed by the Civil Service Code and Equality Duties for Public Authorities.
- ~~3) The Second Respondent, Sheila Proudlock, is the London Region Delivery Director for HM Courts and Tribunals Service; and had direct dealing with the Claimant on matters of Health & Safety for the London Region.~~
- 4) The Second ~~Third~~ Respondent, Phil Cosgrove, is still employed at First Respondent and is a Secretary of the PCS General Executive Committee. He was also the Claimant's Line Manager up until September, 2012.
- 5) The Third ~~Fourth~~ Respondent is the Public & Commercial Services Union (the "Union") which is the largest public services trade union in the UK. The Union operates by employing full-time officers, such as Lavinia O'Connor, ~~the Fifth Respondent~~; as well as making use of elected lay reps such as the Claimant. Lay representatives are responsible for carrying out the Union's Health & Safety obligations, conduct personal cases and also handle local negotiations with management. They escalate issues beyond their control to the full-time officers who are expected to provide high-level representation of members. Lay representatives remain employees of the First Respondent throughout the tenure of their ~~TU~~ trade union roles.
- ~~6) The Fifth Respondent, Lavinia O'Connor, is employed by the Union as a full-time PCS officer in the role of Group Secretary for the Ministry of Justice group. She is expected to head up campaigns against incidents of TU Discrimination within her jurisdiction.~~
- ~~7) The Sixth Respondent, Phil Madelin, is employed by the Union as a full-time PCS officer as the Head of Legal Services. In his capacity, he is expected to provide advice on UK Employment Law. He is also the National officer for disability, equality and Health & Safety.~~
- ~~8) The Seventh Respondent, Steve Blackmore, is employed by the First Respondent and is a senior HR Advisor. Steve instructed Bromley County Court to issue the Claimant with a Written Warning for his disability-related sickness in the absence of following their own ATOS Occupational Health advisory's reasonable adjustment recommendation. Steve Blackmore is also the HR advisor who advises management on the majority of personal cases which the Claimant conducts within the London region crown and county courts.~~

## **Bullying and Harassment on grounds of race and religion**

- 9) On Monday, 20<sup>th</sup> May, 2013, at a PCS Conference, Phil Cosgrove, was allowed to enter the conference room and leave a publication entitled “Kronstadt Bugle” on everyone’s seat before they entered the conference room. He was also allowed to leave copies of the publication on the PCS Union’s official literature table outside the conference room; accessed by all the national conference delegates (all employed by the First Respondent). This conference takes place during working hours and the First Respondent provides paid time off for its employees to attend this 5-day event.
- 10) The Claimant believes that Phil Cosgrove, his former line manager is the author and producer of this publication. Phil Cosgrove remains an employee of the First Respondent and is bound by the First Respondent’s policies and procedures at all times as they relate to equal opportunities, discrimination and harassment of fellow employees and the public at large. Delegates at the conference are given paid time off by the First Respondent to attend this conference and while there discuss work related matters in relation to the business of the Ministry of Justice. As civil servants all Ministry of Justice employees are bound by the First Respondent’s code of conduct and the duty not to breach anti-discrimination legislation or carry out acts of bullying or harassment.
- 11) On 20<sup>th</sup> and 21<sup>st</sup> May, 2013, the First Respondent’s trade union representatives attended this conference. The organizers, who were lay reps of the General Executive Committee, employed by the First Respondent, as well as Lavinia O’Connor ~~the Fifth Respondent~~, refused to remove the publication from the seats ahead of conference delegates arriving, after a complaint was made. This same thing had occurred in May, 2012 and the Claimant was promised by the union that this would not be allowed to happen again. The general secretary of the PCS Union, after receiving a number of complaints to the offensive nature of the publication, promised that the Kronstadt Bugle would not be allowed anywhere inside the conference room. The General Executive Committee (consisting of the same lay reps on duty on 20<sup>th</sup> and 21<sup>st</sup> May 2013) on this occasion also announced to conference that they did not endorse the publication and that it would not be allowed to be distributed within conference rooms again. Phil Cosgrove was present at the time.

12) The Claimant believes that the following extracts from the leaflet amount to bullying and/or harassment because he is Jewish:

- a. Page 1, under the heading "Election Addresses for the GEC" 3rd paragraph, it was stated that "at last year's conference some delegates alleged that they were followed into the toilet and while at the urinal they were asked to join the Independent Left. Perhaps this is how Hicton and Glynn were recruited".
  - i. The Claimant felt that Third Respondent insinuated that he recruited independent electoral candidates by following them into the toilet and enlisting them at the urinal.
  - ii. The Claimant believes Phil Cosgrove, especially due to past comments, was trying to portray him as a sexual deviant and alluded to him being gay or doing sexual favours for prospective members.
- b. Page 1 Column 2 – first paragraph – "Incredible, when the very things the members in his branch complain about are the lack of personal representation and of organization of strikes and walkouts. Len would have us believe that this is a result of his 100% facility time being reduced. But actually, facility time can't be used for preparing industrial action and personal case work is statutory time".
  - i. The Claimant feels that this is damaging to his reputation as it is not true.
  - ii. The Claimant feels that the Third Respondent was implying that he is an ineffective representative, when London Courts Branch members have been complaining that PCS as a union are not doing enough to save their jobs and not the Claimant personally.
  - iii. The Claimant feels that to imply that he prepares industrial action during his facility time is damaging because it is a disciplinary offence.
  - iv. The last sentence of the paragraph alleges that the Claimant campaigned for industrial action during his facility time (FT) and this is a breach of the facilities agreement, once again possibly setting him up for a disciplinary.
- c. Column 2 paragraph 2 – "Finally, rumour has it that Len's branch finances are being managed centrally by PCS HQ anything we should know Len?"

- i. The Claimant feels that the Third Respondent is insinuating that he has misappropriated Union funds and this is damaging to his reputation.
- d. Page 3 – The Claimant was referred to as “Len the Slim Controller”, “Skinny Director” and “Very Skinny Controller”. The Claimant believes that this is because he is overweight.
- e. Page 3 Paragraph 2 – “Sin Leung the Traction Engine: .....no one knows where they are and we have lost control of the branch finances....” – The Claimant believes that this insinuates that he was misappropriating trade union funds.
- f. Page 4 – paragraph entitled “Suspicious of Mr Whitcher” – The Claimant believes that he is being chastised again over his facility time.
- g. “Fat Controller” page 4 paragraph 11.44 – the Claimant believes that this is referring to his weight.
- h. At page 4 paragraph 11.44 it was stated that “After their valiant denouncement of Fascism they were forced to make an alliance with...to save the world from the zombie blood sucking Democracy Alliance”. The Third Respondent has previously called the Claimant a Nazi and Fascist in March and May, 2012. The Claimant has Jewish heritage. He believes that the fact that he is depicted with a pigs nose in the drawing on the flyer, he is being depicted in the way the Jews were depicted in Nazi literature.
- i. Page 4 the Claimant is referred to as “Curvaceous Controller” and “Len Brad Pitt Campling” and he believes that this alludes to him being unattractive and fat.
- j. Page 4 “Percy the Engine – Sin Lucy Lui Leung” the Claimant believes this is racist towards Sin Pin Leung, his Asian colleague.

13) The Claimant believes that the Third Respondent harassed him by failing to put in place measures to prevent a distribution of the offensive publication during the conference on 20 and 21 May 2012 although they had undertaken to prevent a repeat of this after it had occurred last year. They allowed the publication to be placed on delegates’ seats which gave the impression that it was an official publication sanctioned by the union. These acts and omissions on the part of the Second and Third Respondents amount to discrimination contrary to section 57 and 109 of the Equality Act 2010:

- a. Direct discrimination contrary to section 57(2) and (3) of the Equality Act 2010: allowing discriminatory material to be distributed and refusing to remove it from the conference hall;
  - b. Harassment pursuant to section 57(3): allowing material which violated the Claimant's dignity to be disseminated at an official union conference and refusing to remove it although it was brought to attention of union officials present;
  - c. Failing to take any action contrary to section 57(2) in respect of the Claimant's complaint about the racist material.
- 14) The First Respondent has refused to investigate this harassment and bullying by the Second Respondent even though he is their employee and this is the second time this action has taken place. The Claimant relies on sections 26 and/or section 40 of the Equality Act 2010. The First Respondent is vicariously liable for acts of fellow employees who have harassed the Claimant at Brighton conference in breach of the Ministry's Code of Conduct by disseminating material which was offensive on religious and racist grounds contrary to sections 26 and 40 of the Equality Act 2010. The First Respondent has not sought to investigate or discipline employees responsible in particular Phil Cosgrove and Lavinia O'Connor who, respectively, disseminated the publication and allowed it to remain on the premises although a complaint was received from the Claimant.

## **TU Victimization contrary to section 146 TULR(C)A**

### **Background to the Claim**

- 15) The First Respondent through Sheila Proudlock, deliberately took away the Claimant's TU facility time at a time when the London regional H&S committee was in tough negotiations with her office about the First Respondent's failure to meeting H&S obligations.
- 16) Sheila Proudlock, approved facility time for all other TU reps who fall within her jurisdiction, including the Third Respondent, Phil Cosgrove but revoked the facility time agreed for the Claimant. The Claimant had the largest branch and greatest workload within Sheila Proudlock's jurisdiction – and this was demonstrated to her in

an email which they Claimant had sent to her and HR, but she ignored this. It is therefore reasonable to believe there is more to her refusal of the Claimants facility time than meets the eye.

17) The Claimant initially was offered a reduced facility time agreement, unique to him, and was required to return to bailiff work 1 week per calendar month. He was told this was being applied to all other reps at the time. This coincides with conflict on the H&S front between Sheila Proudlock's office and the Claimant's London region H&S Committee. Furthermore, when the claimant returned to the bailiff duties, he was not given any bailiff work to do but was expected to sit at his desk for the full 7.25 hr work day. The Claimant believes there was no business justification for Sheila Proudlock to insist on his return to work but it was rather a deliberate act to make his life difficult and cause him frustration.

~~18) The Claimant conducts 90% of the personal cases which take place within the London region crown and county courts and has a long history of arguing personal cases against the advice given to management by Steve Blackmore. He has a very high success rate and in recent cases management have gone against the advice of Steve Blackmore to support and agree with the Claimant's arguments. The Claimant believes Steve Blackmore, under the direction of Sheila Proudlock, is instructing managers at Bromley County Court, to disregard First Respondent's Equality Duties and issue warnings for the Claimant's sick absence. This is evident to the Claimant because the court manager was embarrassed when she read out the script handed to her by Steve Blackmore; giving reasons why a warning would be reasonable. The main comment was that the Claimant's condition would improve if he quite his TU duties and took up full time bailiff work. The Claimant views this as a threat that action short of dismissal would be taken against him if he doesn't give up his elected TU role.~~

~~19) Both the Fifth and Sixth Respondents, who are full-time employees of the Union, have advised the Claimant and his wife, that it was within the law for the First Respondent, and subsequently Sheila Proudlock, to punish effective reps and remove them from the workplace. They told the Claimant that he didn't have a case and it was perfectly legal for him to be deterred from carrying out his TU duties. Phil Madelin, flashed a Butterworth's legal book and read some definition of "reasonable time off" and pretended to be speaking from a level of authority and legal knowledge applied to the Claimant's best interest. Lavinia O'Connor, supported Phil Madelin in this conversation and reiterated that this happens frequently and there is nothing the~~

~~Union could do as its hands were tied through insufficient legislation. The Claimant believes that both these Respondents aimed to deter him from seeking out the truth and taking action against the breaches of the TULR(C)A. The Claimant further maintains that these two Respondents are collaborating with Sheila Proudlock because their advice resonate Sheila's actions—as if she was given the go-ahead by the Union that no support would be given to back the Claimant.~~

~~20) The Fifth Respondent, represented another member of the Claimant's H&S committee who is also being targeted by Sheila Proudlock at a disciplinary and said nothing but just allowed the disciplinary to go ahead and warning to be issued without hiccup. An ET has been lodged for this matter. Furthermore, Lavinia O'Connor, also wrote to all Branch Secretaries in Sheila Proudlock's jurisdiction and the rest of the Ministry of Justice group, instructing them not to support the Claimant's campaign to have his facility time reinstated. This is unusual practice because at the same time, Lavinia O'Connor, was spearheading a campaign to have another TU reps' facility time reinstated and widely publicized the need to protect facility time and fight TU discrimination. The Claimant therefore strongly believes that Lavinia O'Connor is collaborating with Sheila Proudlock in her agenda to victimize him, and that she used Respondent, Phil Madelin to reinforce her strategy to discourage the Claimant from seeking justice.~~

### **~~Disability Discrimination (closely related to TU Discrimination)~~**

#### **~~Claims for trade union detriment and disability discrimination~~**

~~21) The Claimant has been off sick since February, 2013 and has not yet returned to work. He has been suffering from stress, high blood pressure/hypertension and depression since May, 2012. The First Respondent is aware of the Claimant's conditions. The Claimant avers that his condition amounts to a disability within the meaning of the Equality Act 2010 and that the Respondent has had actual notice of this through his sick notes and reports from occupational health dated where they have advised the Respondent that his hypertension is likely to be considered a disability.~~

~~22) The Claimant's day to day activities that are affected by his conditions are:~~

- ~~a. He has sleeping problems as he wakes up frequently in cold sweats~~



- b. He has eating problems and has lost almost 3 stone over two months
- c. When his hypertension is affected he is unable to see or walk or move
- d. His concentration is being affected; he seems confused and unable to focus and has breathing problems.
- e. He is constantly on medication, and when he stops, his symptoms come back and get stronger.

23) The Claimant is on full-time medication, and sees a psychiatric consultant for therapy to deal with the mental health condition which has developed as a result of the workplace bullying and harassment. The psychiatric consultant advised the Claimant that as part of his healing, he needs to seek justice and take up a grievance, because the main cause of his condition is the overwhelming sense of injustice which has been dealt against him, and the fact that the First and ~~Third~~ Fourth Respondents are unwilling to take any action to address his grievances.

24) The First Respondent's occupation health advisory, ATOS ("ATOS"), assessed his condition and made the reasonable adjustment recommendation that the Claimant should not be expected to return to work until his grievances have been dealt with. At 19<sup>th</sup> August, 2013 – there is no indication what the intentions of the First Respondent is because the only response to the grievance submitted in June, 2013, is that the grievances have been referred to the relevant departments.

25) The Claimant was given a written warning on the 5<sup>th</sup> July, 2013 from the First Respondent as up to that point he had 93 days off sick, he was not fit for work and he did not consider that he would be fit to return to work for some time. The Claimant had indicated his psychiatric consultant's advice as well as his own viewpoint, on every occasion when he met with the First Respondent's managers at Bromley County Court, that (i) he had no indication what was expected of him work-wise, now that he was being deterred from carrying out his TU duties, (ii) he would like to move forward as being ill and off work was a heavy financial burden to his young family, and (iii) he strongly believed his condition would improve if the First Respondent could indicate it was willing to address his grievances or be more clear on where he stood in terms of Sheila Proudlock's expectations of his return to work as he was legally entitled to carry out his TU activities which she had out-rightly refused. The Claimant was not given an opportunity to discuss this matter with anyone and there is no indication of an investigation either (as at 19<sup>th</sup> August 2013).

- 26) ~~The Claimant believes it was the strategy of the First Respondent, under the guidance of the Second Respondent, Sheila Proudlock, and the advice of Seventh Respondent, Steve Blackmore, to do the opposite of what was recommended by ATOS, as well as the psychiatric consultant, in order to deliberately exacerbate the Claimant's condition.~~
- 27) The Claimant believes that he was discriminated against because of his disability; but more importantly, because of his trade union activities.
- 28) The First Respondent failed to make the reasonable adjustments recommended by ATOS on 18 June 2013, which was to adequately address his grievance to alleviate the overwhelming sense of injustice which was the core source of his stress levels which takes his blood pressure and hypertension to dangerous levels. ATOS further added to this reasonable adjustment that the Claimant should not be expected to return to work until the reasonable adjustment has been put in place.
- 29) The Claimant submitted a grievance letter on 8<sup>th</sup> July, 2013 and three points were set out:
- a. Trade Union discrimination
  - b. Disability Discrimination
  - c. Bullying and harassment by ex-line manager, the Third Respondent, at a trade union conference in May, 2013 and some other trade union representatives.
- 30) The First Respondent has since sent out an acknowledgement of receipt, and later responded that the three grievance matters have been referred to (i) employee relations – for the TU discrimination claim, (ii) the Union – for the Kronstadt Bugle, and (iii) the cluster manager for Bromley County Court who reports into Sheila Proudlock – for the disability discrimination.
- 31) The Claimant contends that these facts amount to disability discrimination and detriment because of trade union activities :

In relation to trade union detriment contrary to section 146(1) of TULR(C)A

- i. Failing to investigate his grievance in to religious and race discrimination by fellow employees;

- ii. Issuing him with a warning on 7 July 2013 when he is off sick suffering from stress and hypertension occasioned by religious and racial harassment.

In relation to disability discrimination

- i. The Respondent on advice of Steve Blackmore issued a written warning to the Claimant on 7 July 2013 because of his sickness absence contrary to sections 6 and 13 and 15 of the Equality Act 2010.
- ii. The Claimant contends that contrary to section 20 of Equality Act 2010 the Respondent failed to make reasonable adjustments namely:
  - a. failed to investigate his grievance which occupational health has cited as a contributing factor to his remaining off work as it has exacerbated his stress and his hypertension. High blood pressure and stress are inextricably linked;
  - b. Applied its managing sickness absence policy to the Claimant while disregarding the reason for his protracted illness ie the failure to investigate his grievance. The Claimant was informed that they were entitled to issue the warning as the matters affecting his health did not involve his local office but involved senior managers eg Sheila Proudlock. They were at all times aware that he was signed off sick because of work related stress and hypertension which would have been alleviated by dealing with his grievance.

**Conclusion**

32) The Claimant therefore believes that he was discriminated against because of his race, religion ~~sexual-orientation~~ and disability.

33) The Claimant believes he was ~~is being~~ bullied and harassed by the ~~Second~~ Third Respondent, Phil Cosgrove, ~~not only related to protected characteristics but also~~ through violating his dignity by creating an intimidating, hostile, degrading, humiliating and offensive environment for him to work in. Phil Cosgrove has further spread malicious rumours about the Claimant.

34) The Claimant further believes he is being deterred from carrying out his TU duties. He is being punished for being an “effective TU rep” contrary to section 146 of TULR(C) A.

~~35) The Claimant also believes he is being punished for carrying out his H&S obligations. He, and his other TU colleagues on the H&S committee, are being punished for carrying out their legislative H&S obligations. The Claimant believes this is the main reason why Sheila Proudlock has attacked him and that her discriminatory actions toward him in his TU capacity forms a correlation with the activities of the London region H&S committee.~~

~~36) The Claimant believes the First and Fourth Respondents have failed to protect his health & safety at work. Under the Health & Safety at Work Act 1974, as well as the Union’s Harassment Protocol which makes provision to protect delegates at union events from harassment, they were obligated to address and remedy to cause of the Claimant’s work-related stress.~~

37) The Claimant believes he is being unlawfully victimized contrary to section 146 of TULR(C)A by the First Respondent through Sheila Proudlock and Steve Blackmore ~~and the First Respondent~~ for carrying out his TU duties. He believes his grievance against Phil Cosgrove is deliberately not being addressed to punish him for being an effective TU rep. Sheila Proudlock wrote to the Claimant that she refused to grant him facility time due to him under the First Respondent’s own Facility Time Agreement, and Steve Blackmore upheld the Claimant’s written warning for disability related sickness stating he, the Claimant, would get better if he quit his TU duties and worked full-time as a bailiff.

### **Claims against PCS trade union**

38) The Claimant seeks to bring the following claims for race and religious discrimination against his union which is in breach of sections 57 and 109 of the Equality Act 2010.:

- a. Direct discrimination contrary to section 57(2) and (3) of the Equality Act 2010: allowing discriminatory material to be distributed and refusing to remove it from the conference hall;

- b. Harassment pursuant to section 57(3): allowing material which violated the Claimant's dignity to be disseminated at an official union conference and refusing to remove it although it was brought to attention of union officials present;
- c. Direct discrimination and harassment in failing to take any action contrary to section 57(2) in respect of the Claimant's complaint about the racist material.