

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN:

VARIOUS CLAIMANTS

Claimants

-and-

THE ROYAL PARKS LIMITED

Respondent

GROUND OF COMPLAINT

Introduction

1. These are the Claimants' claims for indirect race discrimination contrary to ss.19 and 41 EqA.
2. The focus of the complaint is on the contractual arrangements put in place by the Respondent (and its predecessors) for determining the pay and other benefits of outsourced workers. Those arrangements treat outsourced workers less favourably than the Respondent's direct employees. They thereby have a disparate impact on workers from a black or minority ethnic ("BME") background, who are more likely to find themselves in outsourced roles.
3. The Claimants are park workers. Their length of service ranges from 26 years to 11 months. Appended to these Grounds of Complaint is a list of each claimant, his/ her dates of service and his/ her racial background.

Facts

4. The Respondent is the body responsible for the maintenance of London's eight royal parks. It was formed in 2017 by the merger of the Royal Parks Agency ("RPA") and the Royal Parks Foundation. Although ostensibly a private limited company, the Respondent performs a public service. According to its website it maintains the parks "on behalf of the government", namely, the Secretary of State for Digital, Culture, Media and Sport. According to the Respondent's website, it follows government policy on public procurement. It is subject to the public sector equality duty (s.149 EqA).
5. The Respondent and its predecessors have always recognised the legitimacy of the London Living Wage ("LLW") in principle. Regarding the Respondent's direct employees, it has never paid them less than the LLW. The bottom of its pay scale respects the LLW and does not undercut it.

November 2014

6. The Respondent chooses to outsource some of the park maintenance services. In 2014 its predecessor, the RPA, invited tenders from cleaning contractors. One such contractor was Vinci Construction UK Ltd (“Vinci”). It submitted a dual bid and presented the RPA with a choice:
 - a. One bid was costed on the basis that Vinci would supply park attendants and pay them the London Living Wage (“LLW”).
 - b. An alternative bid was costed on the basis that Vinci would supply park attendants and pay them at a lesser rate, the National Minimum Wage (“NMW”).
7. In November 2014 the RPA selected Vinci as its contractor and opted for the NMW bid over the LLW bid. It thereby made a calculated choice to put in place a contractual arrangement under which park attendants would receive less than the LLW. In furtherance of this arrangement, each of the Claimants has been employed by Vinci and supplied to the Respondent as a park attendant.
8. Around the same time, the RPA exercised similar control or influenced over the other terms on which work was made available for park attendants. In particular, it determined what their entitlements would be in respect of overtime, “on-call allowance”, sick pay, annual leave, pension, redundancy pay and maternity pay. Park attendants receive the statutory minimum entitlements only. By contrast, at all material times, direct employees of the RPA or the Respondent direct employees have received generous contractual entitlements far in excess of the statutory minima.

November 2014 – December 2019

9. At various points during the period November 2014 – 11th December 2019, the RPA and later the Respondent reviewed the rate of pay and other contractual benefits on offer to park attendants. Whenever they were provided by Vinci with costings based on the LLW, they maintained and reaffirmed the existing practice of opting for NMW and statutory minimum entitlements for outsourced workers.
10. Following strike action, on 12th December 2019 the Respondent made an executive decision to increase outsourced workers’ rate of pay to bring it in line with the LLW. This change was applied retrospectively from 1st November 2019. The disparity in relation to sick pay and other benefits (entitlements to annual leave, pension, overtime, “on-call allowance”, redundancy pay and maternity pay) remains in place.

Claims

s.41 EqA

11. The relationship between the Respondent and each Claimant was that of “principal”/ “contract worker”. The Respondent is a “principal” under s.41(5) EqA. It made work available for an individual. Each Claimant was employed by another person, Vinci, and was supplied by Vinci in furtherance of the contract between the Respondent and Vinci. Each Claimant is a “contract worker” under s.41(7) EqA. He or she was supplied to the Respondent in furtherance of the Royal Parks/ Vinci contract and engaged for the benefit of the Respondent.

s.19 EqA: PCPs

12. The Respondent has made a series of decisions which have had the effect of applying and maintaining the following PCPs:
 - a. Up until 11th December 2019, the Respondent maintained the practice of a double-standard on the acceptable minimum rate of pay for staff – hereafter, “the minimum pay PCP”. It was a double-standard because the Respondent adopted a different minimum depending on whether staff were direct employees (a minimum not less than LLW) or outsourced workers (a minimum of NMW). Put another way, it adopted a selective approach to upholding the LLW.
 - b. At all material times the Respondent has maintained a two-tier policy on entitlement to other contractual benefits – hereafter, “the contractual benefits PCP”. Its practice has been to afford different benefits to staff depending on whether they are direct employees or outsourced workers. Outsourced workers are excluded from contractual benefits regarding annual leave, sick pay, pension, overtime, “on-call allowance”, redundancy pay and maternity pay.

s.19: particular disadvantage: BME vs non-BME staff

13. Each of the PCPs has had a discriminatory impact in practice. They have a disparate impact on BME staff compared to non-BME staff. In particular:
 - a. The pool for comparison consists of all the Respondent’s directly and indirectly employed staff.
 - b. The proportion of BME staff who are negatively affected by the minimum pay PCP is greater than the proportion of non-BME staff who are negatively affected by it.

- c. The proportion of BME staff who are negatively affected by the contractual benefits PCP is greater than the proportion of non-BME staff who are negatively affected by it.
- d. BME staff are disproportionately more likely than non-BME staff to be negatively affected by both PCPs. They are put at a particular disadvantage.

Proportionate means of achieving a legitimate aim

14. The PCPs are not a proportionate means of achieving a legitimate aim. The Respondent claims to recognise the legitimacy of the LLW for London-based workers. Logically, it cannot be a legitimate aim to distinguish between directly employed staff and sub-contractors, given that both are London-based. The two-tier approach to contractual benefits is also unjustified.

Remedy sought

15. Each Claimant seeks:
- a. compensation for injury to feelings;
 - b. compensation for financial losses that he or she has suffered in consequence of the PCPs;
 - c. a recommendation.

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Respondent

CLAIMANT INFORMATION

Name	Race / Country of origin	Approximate start date
Geneviv Boohene	Black – Ghanaian	01/05/1996
Agnes Yeboah	Black – Ghanaian	28/03/2018
Hagar Benthum Brook	Black – Ghanaian	01/07/2017
Ernestina Antwi	Black – Ghanaian	01/04/2009
Giuseppe Marro	White – Italian	01/04/2012
Jennifer Masqoi	Black – Sierra Leone	01/07/2012
Dapaah Kofi	Black – Ghanaian	01/08/2010
Margaret Safoowa	Black – Ghanaian	25/05/2019
Daniel Antwi	Black – Ghanaian	15/04/2015
Janet Martey	Black – Ghanaian	01/06/1997
Sadiq Quadri	Black – Nigerian	01/11/2009
Adedayo Obadare	Black – Nigerian	01/08/2014
Patricia Panford	Black – Ghanaian	01/02/2018
Frank Behoe	Black – Ghanaian	01/12/2016
Regina Tetteh	Black – Ghanaian	01/06/2014