A reminder of the limits of earlier factual findings in subsequent proceedings

By Matthew Curtis
3PB Barristers

In *Morgan v Morgan & ors*[1], the High Court provides a reminder of the limited circumstances in which a judge's factual findings can be relied upon in subsequent litigation.

The facts

The dispute related to a family company and the manner in which it had been run. The claim was brought by Richard Morgan against some of his brothers, nephews and sister-in-law, each of whom were shareholders in, or directors of, SMS Farming Limited ('SMS').

One of the issues for the Judge to determine was whether Richard Morgan was an employee of SMS. Richard, along with his wife Julie, had issued unfair dismissal claims against the company in the Employment Tribunal. Those claims had been determined at a preliminary hearing on 30 January 2025, when an Employment Judge issued a judgment holding that they were neither employees nor workers for the purposes of s.230 ERA 1996. The decision was appealed to the EAT and rejected on the sift on 23 July 2025.

The decision on admissibility of the ET and EAT judgments and findings

HHJ Paul Matthews (sitting as a High Court Judge) ruled that the findings of the ET and the EAT were irrelevant and inadmissible in the High Court proceedings. He relied on the rule in *Hollington v Hewthorn* ([1943] 1 KB 587)

The rule in *Hollington v Hewthorn* is a reminder that the judge hearing the case should decide all of the issues. They are not bound by findings of fact of another decision maker (however distinguished that decision maker is, and however thorough and competent their examination of the issues may have been). In fact, the findings of another decision maker are inadmissible.

1 [2026] EWHC 384 (Ch)

The reasoning behind it is simple: the trial judge must decide the case for themselves based on the evidence, documents and submissions they receive. To admit someone else's factual findings into evidence risks the decision being made on evidence other than that which the trial judge has heard.

HHJ Matthews went on to find that Richard and Julie were employees of SMS.

Exceptions to the rule in *Hollington v Hewthorn*

There are some exceptions to the rule, including the following:

- Issue estoppel or abuse of process. This may arise where an issue has been litigated and decided in an earlier action between the same parties. It did not arise in this case as the "employee or not" issue in the High Court was being litigated between the individuals, whereas in the Employment Tribunal it was litigated between Richard and Julie Morgan and SMS. While SMS was a party to the High Court proceedings, it did not plead to any of the issues, took a neutral position and was not represented at the hearing.

- Civil Evidence Act 1968 ss.11-13. This permits certain findings or judgments to be admitted in evidence. Criminal convictions being admitted as evidence to prove the offence was committed is a familiar example; the Civil Evidence Act also allows findings of adultery and paternity to be admitted in subsequent proceedings.

Practical guidance

Sometimes cases arise where there is concurrent High Court and Employment Tribunal litigation. When deciding which ought to be litigated first a common consideration is whether the findings in one piece of litigation will be binding in the other.

Morgan v Morgan provides a timely reminder that the findings will not be binding (and will not be admissible) where the parties are different as between the High Court and the Employment Tribunal litigation.

To give a practical example of when this could arise, in a recent case I was instructed on an employee alleged they suffered an accident while working and litigated personal injury proceedings in the High Court at the same time as unfair dismissal proceedings in the Employment Tribunal (alleging that his employer treated him negatively following the

accident). In such a case the parties to the litigation could be different if the accident occurred on a site controlled by a third party (so that there is a claim under the Occupiers Liability Act against the site controller, and not against the employer). In those circumstances, factual findings from one judge would not be binding on the other and there would be no good reason to stay either set of proceedings. It could be highly relevant if (for example) there is a dispute about whether an accident genuinely occurred, or whether it occurred as alleged; the findings of the concurrent proceedings would not be cross-admissible unless the parties were the same.

27 March 2026

Matthew Curtis
Barrister
3PB Barristers
matthew.curtis@3pb.co.uk
01962 868 884
3pb.co.uk