Case No: 2407300/2015

EMPLOYMENT TRIBUNALS

Claimant: Mr R Siauciunas

Respondents: 1 Capita Translation & Interpreting Ltd
2 Ministry of Justice

PRELIMINARY HEARING

Heard at: London Central **On:** 29 August 2017

Before: Employment Judge H Grewal

Representation

Claimant: No appearance
First Respondent: Mr T Sadiq, Counsel
Second respondent: Mr A Henderson, Counsel

JUDGMENT

The judgment of the Tribunal is that it does not have jurisdiction to consider the claim because:

1 The Claimant was not employed by the First Respondent within the meaning of section 83(2)(a) of the Equality Act 2010, and

2 The Second Respondent could not be potentially liable under either section 41 or 122 of the Equality Act 2010.

REASONS

1 In a claim form presented on 2 August 2015 the Claimant complained of discrimination on the grounds of race and religion or belief.

The Issues

2 It was agreed at the outset of the hearing that the issues that I had to determine at this preliminary hearing were:

(a) Whether the Claimant was employed by the First Respondent within the meaning of section 83(2)(a) of the Equality Act 2010; and

(b) Whether the Second Respondent could potentially be liable under either section 41 or section 112 of the Equality Act 2010.

It was agreed that if the Claimant was not employed by the First Respondent, the Second Respondent could not be potentially liable under either of those two sections. It was also agreed that, contrary to what I had said at the preliminary hearing on 6 June 2017, I did not have to determine whether the First Respondent was an employment service provider within the meaning of Section 55 of the Equality Act 2010 because that issue had been determined at the previous preliminary hearing and that conclusion had not been appealed.

The Law

3 Section 83(2) of the Equality Act 2010 ("EA 2010") provides,

"*Employment" means –*
(a) Employment under a contract of employment, a contract of apprenticeship or a contract personally to do work."

4 Section 230(3) of the Employment Rights Act 1996 ("ERA 1996") provides,

"*In this act "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, …, 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".

5 In **Allonby v Accrington and Rossendale College [2004] ICR 1328** the European Court of Justice was concerned with whether the claimants in an equal pay claim were "workers" under Article 141 of the Treaty establishing the European Community. Article 141 expressed the principle of equal pay for male and female workers for equal work or work of equal value. The ECJ said, at paragraphs 67 and 68,

> "*For the purposes of that provision, there must be considered a worker a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration…*
>
> *Pursuant to the first paragraph of article 141(2)EC, for the purpose of that article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. It is clear from that definition that the authors of the treaty did not intend that the term 'worker', within the meaning of article 141(1)EC, should include independent providers of services who are not in a relationship of subordination with the person who receives the services."*

6 In **Hashwani v Jivraj [2011] ICR 1004** the issue before the Supreme Court was whether arbitrators were employees within the meaning of section 83(2) EA 2010. Lord Clarke said, at paragraph 34,

> "*The essential questions … are … those identified at paragraphs 67 and 68 of Allonby … namely whether, on the one hand, the person concerned performs services for and under the direction of another person in return for which he or she receives remuneration or, on the other hand, he or she is an independent provider of services who is not in a relationship of subordination with the person who receives the services. Those are broad questions which depend upon the circumstances of the particular case. They depend upon a detailed consideration of the relationship between the parties."*

7 It has been recognised that although the wording of section 83(2) EA 2010 is not the same as that of section 230(3) ERA 1996, the same test applies for both statutes. In **Bates van Winkelhof v Clyde & Co LLP [2014] ICR 730**, a case concerned with whether a member of an LLP was a worker within the meaning of section 230(3) ERA 1996, Baroness Hale said, at paragraph 31,

> "*As already seen, employment law distinguishes between three types of people: those employed under a contract of employment; those self-employed people who are in business on their own account and undertake work for their clients or customers; and an intermediate class of workers who are self-employed but do not fall within the second class. Discrimination law, on the other hand, while it includes a contract 'personally to do work' (see, now, Equality Act 2010, section 83(2)) does not include an express exception for those in business on their own account who work for their clients or customers. But a similar qualification has been introduced by a different route."*

Baroness Hale then explained what that different route is. She was referring to paragraphs 67 and 68 of Allonby. Having set out the reasoning in those paragraphs, she continued, at paragraph 32,

> "*The concept of subordination was there introduced in order to distinguish the intermediate category from people who were dealing with clients or customers on their own account. It was used for the same purpose in the discrimination case of Hashwani v JIvraj."*

In **Windle v Secretary of State for Justice [[2014] IRLR 914** in the EAT HHJ Peter Clark said, at paragraph 27,

> "*although the profession or business undertaking in s.230(2)(b) ERA is not, in terms, reproduced in s.83(2) EqA, in reality, as Mr Sheldon firmly submitted to us, there is no material difference between the two."*

8 It is not always easy to determine whether a person is someone who is in business on his or her own account undertaking work for his/her clients or customers or a worker. In **Cotsworld Development Construction Ltd v Williams [2006] IRLR 181** Langstaff J suggested, at paragraph 53,

> "*a focus on whether the purported worker actively markets his services as an independent person to the world in general (a person who will have a client or customer) on the one hand, or whether he is recruited by the principal to work for that principal as integral part of the principal's operations, will in most cases demonstrate on which side of the line a person falls."*

In **Bates van Winkelhof v Clyde & Co** Baroness Hale said, at paragraph 39,

> "*I agree with Maurice Kay LJ that there is 'not a single key to unlock the words of the statute in every case.' There can be no substitute for applying the words of the statute to the facts of the individual case… As Elias LJ recognised in Redcarts* [James v Redcats (Brands) Ltd [2007] IRLR 296], *a small business may be genuinely an independent business but be completely dependent upon and subordinate to the demands of a key customer (the position of those small factories making goods exclusively for the 'St Michael' brand comes to mind). Equally, as Maurice kay LJ recognised in Westwood* [Hospital Medical Group Ltd v Westwood [2012] IRLR 834], *one may be a professional person with a high degree of autonomy as to how the work is performed and more than one string to one's bow, and still be so closely integrated into the other party's operation as to fall within the definition… While subordination may sometimes be an aid to distinguishing workers from other self-employed people, it is not a freestanding and universal characteristic of being a worker."*

9 The existence of any contract between two parties requires mutual obligations on the parties. They constitute the consideration from each party necessary to create the contract. In the absence of mutuality of obligation there can be no contract. In **Quashie v Stringfellow Restaurants Ltd [2013] ILR 99** Elias LJ stated, at paragraphs 10-12,

> "*… Typically an employment contract will be for a fixed or indefinite duration, and one of the obligations will be to keep the relationship in place until it is lawfully severed, usually by termination on notice. But there are some circumstances where a worker works intermittently for the employer, perhaps as and when work is available. There is in principle no reason why the worker should not be employed under a contract of employment for each separate engagement, even if of short duration, …*
>
> *Where the employee working on discrete separate engagements needs to establish a particular period of continuous employment in order to be entitled to certain rights, it will usually be necessary to show that the contract of*

employment continues between engagements…

In order for the contract to remain in force, it is necessary to show that there is at least what has been termed 'an irreducible minimum of obligation', either express or implied, which continues during the breaks in work engagements… Where this occurs, these contracts are often referred to as 'global' or 'umbrella' contracts because they are overarching contracts punctuated by periods of work. However, whilst the fact that there is no umbrella contract does not preclude the worker being employed under a contract of employment when actually carrying out an engagement, the fact that a worker only works casually and intermittently for an employer may, depending on the facts, justify an inference that when he or she does work it is to provide services as an independent worker rather than as an employee."

10 In **Windle and another v Secretary of State for Justice [2016] ICR 721** the Court of Appeal held that while the ultimate question in determining whether a claimant was employed under a contract personally to do work within the meaning of section 83(2)(a) of the Equality Act 2010 was the nature of the relationship during the period when the work was being done, it did not follow that the absence of mutuality of obligation outside that period might not influence, or shed light on, the character of the relationship within it; that it was a matter of common sense and common experience that the fact that a person supplying services was only doing so on an assignment by assignment basis might tend to indicate a degree of independence, or lack of subordination, in the relationship while at work that was incompatible with employment status under a contract personally to do work; that its relevance would depend on the particular facts of the case.

11 In **Pimlico Plumbers Ltd and another v Smith [2017] IRLR 323** the Court of Appeal summarised the applicable principles as to the requirement for personal performance in section 83(2) EA 2010 and section 230(3) ERA 1996 as follows. Firstly, an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally. Secondly, a conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the conditionality. It will depend upon the precise contractual arrangements and, in particular, the nature and degree of any fetter on a right of substitution or, using different language, the extent to which the right of substitution is limited or occasional. Thirdly, by way of example, a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance. Fourthly, again by way of example, a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance. Fifthly, again by way of example, a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance.

12 Four different employment tribunals in different parts of the country have held that interpreters who provided their services to the First Respondent were not employed by or workers of the First Respondent. Three of those decisions were given in 2014 and the fourth was given in August 2017. In all those cases the First Respondent adduced the same evidence as it has before me. I am not obliged to follow those decisions (paragraph 50 of the EAT's decision in this case) but if I disagree with their

reasoning and take a different approach, I should clearly explain why I have done so.

The Evidence

13 The Claimant had made it clear that he would not be attending this hearing. He was reminded that if he wished to make any written representations he should do so one week before the hearing. He did not do so. I read and took into account the Claimant's witness statement dated 2 December 2015 made for the previous preliminary hearing. Karl Johnson, Operations Director of the First Respondent, gave evidence. The Second Respondent did not call any witnesses. There was a small bundle of documents. Having considered all the oral and documentary evidence, I made the following findings of fact.

Findings of Fact

14 Between January 2012 and October 2016 the First Respondent, in accordance with a Framework Agreement with the Second Respondent, provided interpreting and translation services to Her Majesty's Courts and Tribunal Service, the Crown Prosecution Service, Her Majesty's Prison Service and police forces across England and Wales. The First Respondent engaged the interpreting services of about 3,500 interpreters on a self-employed basis.

15 At the material time the Claimant was a Lithuanian interpreter. He passed the Diploma in Public Services Interpreting (Law option) in June 2009 and was on the National Register of Public Services Interpreters.

16 On 15 April 2013 the Claimant registered online with the First Respondent. As part of the registration process the Claimant was required to provide evidence of his qualifications, interpreting experience, right to work in the UK and security clearance in the form of either Disclosure and Barring Service ("DBS") or Non Police Personnel Vetting ("NNPV") clearance at level 3. He was not interviewed, and there was no induction process or probationary period. The Claimant entered into an Interpreter Services Agreement with the First Respondent. This provided, inter alia,

> "*Upon entering into an Assignment, Capita hereby engages the interpreter to provide the Services. Capita will detail the Assignment to the interpreter in a format in accordance with Attachment 1 appended hereto (such detail shall be referred to as the Job Confirmation) on a non-exclusive basis and the interpreter hereby agrees to provide the Services upon the terms and conditions set out in this Agreement and in accordance with the Attachments."* (clause 1);
>
> *"this Agreement shall be deemed to have commenced on the Commencement Date and shall continue until such time that either party issues written notice in accordance with clause 6. ("Term")"* (clause 2);
>
> *"The Interpreter shall provide the Services to Capita in accordance with the terms of this Agreement. The parties acknowledge that the Interpreter may may not utilise any other individual or organisation in place of the Interpreter for these purposes."* (clause 3.3);
>
> *"Failure on the part of the Interpreter to commence the Assignment in*

accordance with the time stated in the Job Confirmation shall constitute a breach" (clause 3.4a);

"*In the event that an Assignment is determined to have been completed to a standard that is not in line with the Interpreter's obligations as set out in clause 3.2(i), the Capita shall be entitled to charge a Complaint Administration Fee in respect of such work, in the manner set out at Attachment 3"* (clause 3.4b);

"The Interpreter shall at all times in its performance of the Services comply with the Code of Professional Conduct as stated at Attachment 2 to this Agreement and as amended by notification from time to time." (clause 3.12);

"Capita's Obligations
Capita shall provide the Interpreter with all necessary access to information reasonably required for the completion of each Assignment by the Interpeter." (clause 4.1);

"In consideration of the provision of the Services to the reasonable satisfaction of Capita, Capita shall pay to the Interpreter the fees as calculated in line with the hourly rates and expenses referenced within Attachment 1 (the "Fees"), provided that:

(a) The completion of an Assignment has been ratified in accordance with clause 5.2 below; and

(b) The Interpreter has subsequently accepted the due amount as set out in the electronic invoice issued by Capita (which may be referred to as the "pro forma invoice")" (clause 5.1);

"No payment shall be made by Capita in respect of holiday, sickness, pension rights, redundancy pay or other benefits." (clause 5.3);

"The Interpreter will be solely responsible for all tax liabilities, national insurance contributions, social security contributions and any other taxes and deductions payable in respect of the Interpreter for the provision of the Services" (clause 5.4);

"The Interpreter shall defend, hold harmless and full indemnify Capita against any loss (Including loss of or damage to Capita's property and the property of the Capita's officers, employees or agents), claims, costs, liabilities, damages and expenses, whether direct, indirect, economic, financial, consequential or otherwise, suffered or incurred by Capita or any capita clients arising from any willful default, negligent, wrongful or dishonest (including fraudulent) act or omission by the Interpreter or any breach by the Interpreter of any of the provisions of this Agreement" (clause 9.2);

"Nothing is this Agreement shall be construed or have any effect as constituting any relationship of employer and employee, or worker, or contractor between Capita and the Interpreter, and the Interpreter shall procure that it shall not hold itself out as such" (clause 11.5);

"This Agreement is personal to Capita and the Interpreter and neither may sell, assign, sub-contract or transfer any duties, rights or interests created under this Agreement without the prior written consent of the other" (clause

11.8);

"This Agreement is not an exclusive Agreement, and subject to the Interpreter's obligations in this Agreement, nothing in this Agreement shall operate to prevent the Interpreter from engaging in other services" (clause 11.9)

17 Requests from the First Respondent's customers for the services of an interpreter were entered on the First Respondent's online portal. In the majority of cases the customer input the job specifications onto the portal itself. In some cases the request was made by telephone and the First Respondent's administrative staff uploaded the specifications onto the outline portal. The job specification gave the date(s) and address of the assignment and the minimum "tier" of interpreter required. Each interpreter registered with the First Respondent was assigned a "tier" for each of the languages spoken by him or her appropriate to his/her experience, qualifications and skills. The appearance of a new job specification on the portal automatically generated an offer of that job which was sent by email/text to all registered interpreters who had the requisite qualifications (in terms of tier and language) and are available. Each interpreter had a "profile page" on the First Respondent's database, on which he or she could indicate any periods when they were not available for work. The First Respondent also had a team of people who contacted interpreters by telephone and sought to engage their services. That was the First Respondent's preferred method of contact when a job needed to be picked up at short notice.

18 The interpreter, who was made aware of a job suitable for him, could express an interest in undertaking the job (via email, text or online), inform the First Respondent that he was not interested on the job or he could just ignore it. The Claimant regularly did not pick up jobs which were on offer, either by ignoring the offer of work or by declining it. If more than one interpreter expressed an interest in a particular job, the First Respondent selected the interpreter that it considers the most appropriate for the job, having regard to the qualifications required for and the location of the job. When interpreters were directly called by telephone about a job, normally the first person who responded to the call and verbally confirmed that he or she was willing to provide the service was offered the job.

19 If, having expressed an interest in a job or having agreed to do it, the interpreter, for whatever reason, could not do the job, he or she could suggest or nominate another interpreter to do the job, provided that the nominee was registered with the First Respondent or was able to do so in time, met the relevant criteria and was available to do the work. If the First Respondent was satisfied that the nominee was suitable, it would then give the job to the nominee.

20 Once the First Respondent and the interpreter had agreed that he was going to do a particular job, the First Respondent would send him an Assignment Confirmation email. The email confirmed that a new Interpreting Assignment had been assigned to him and provided the date and venue of the assignment and a job reference number. The interpreter was reminded that failure to attend the assignment and to notify the First Respondent of his inability to attend could lead to a Cancellation charge being applied.

21 The interpreter was responsible for attending at the stipulated venue in time to

commence the job at the stipulated time. The institution concerned informed him of the precise tasks that he was required to carry out. He was expected to provide interpreting services to a standard that would reasonably be expected of a skilled and experienced interpreter. The First Respondent did not provide the interpreters with any equipment to carry out their work. The First Respondent did not supervise the Claimant's interpreting or tell him how he should do it.

22 While working on any assignment the interpreter was expected to comply with the First Respondent's Interpreter Code of Professional Conduct. The Code covered matters such as keeping confidential the information divulged and materials used during the assignment, disclosing to Capita or the customer any reasons which would make it inappropriate for the interpreter to carry out that assignment, interaction with the person for whom the interpreter was interpreting, the dress code (essentially smart causal with a prohibition on certain items of clothing such as denim, shorts, flip-flops), acting impartially and not engaging in activities which could reasonably be deemed to be likely to damage the reputation of the profession of interpreting and the reputation of Capita's client. The Code also provides that the interpreter should "*never sub-contract or attempt to sub-contract work to another party under any circumstances."*

23 Any complaints by a customer about an interpreter were logged on to the First Respondent's Customer Portal. The complaints usually fell into the following categories – the interpreter did not attend or was late, incorrect timesheet data was entered by the interpreter leading to an incorrect payment being requested, poor interpreting skills, interpreter was lacking cultural understanding of behavioural expectations and short-notice cancellation by the interpreter. Once a complaint was received, the First Respondent would seek the interpreter's response to it and would look into it. If the interpreter was found to be fault, the First Respondent could take sanctions against him or her. The various sanctions that could be imposed were set out in a Sanctions Policy. The sanction imposed could be a warning letter, a deduction of payment, suspension for a short period or removal from the First Respondent's register of interpreters. There might also be a Complaint Administration fee levied to cover the cost of administering the complaint.

24 The First Respondent provided interpreters with timesheets that could be printed directly from the First Respondent's online portal. At the end of each assignment the interpreter had to get a paper timesheet signed off by the customer's authorised member of staff. The interpreter kept that timesheet as his/her record of the hours worked in case of any dispute. Either the customer or the interpreter could close down a job and complete an online timesheet. Interpreters were paid from the booked start time (even if the job started later) to the end of the job. If the customer had completed the online timesheet the interpreter had to confirm the payment. Once the payment had been confirmed the First Respondent raised an invoice on the interpreter's behalf. The First Respondent invoiced each Sunday and payment was normally paid the following Friday. It was made clear to the interpreters that as self-employed individuals they were solely responsible for all tax liabilities. The First Respondent did not deduct any tax or NI contributions at source.

25 The First Respondent supplied the interpreters with an "Interpreter Handbook" which was said to be "*Your introduction to Supplying Interpreting Services to Capita Translation and Interpreting."* The Handbook provided practical guidance on matters such as registering with the First Respondent, the booking of jobs, timesheets and

payments, conduct and the handing of any complaints. It was staed in the introduction to the Handbook,

> "*Interpreters engage with us as freelance suppliers and are not directly employed by Capita TI. For the avoidance of doubt, we confirm that upon acceptance to our Interpreter Panel, you are not considered an agency worker under the Agency Worker Regulations 2010. Furthermore, nothing in this handbook, nor any Assignment offered to you shall be construed or have effect as constituting a partnership, joint venture or contract of employment between Capita TI and the Interpreter.*"

26 None of the interpreters were paid any sick pay or holiday pay. The Claimant never queried or raised any issue about that while he was providing services to the Respondent.

27 While the Claimant was providing services to the First Respondent he also provided interpreting services to other customers.

28 The Claimant was not subject to any performance management or appraisal system.

Conclusions

29 I considered first whether there was in existence an overarching contract between the Claimant and the First Respondent covering the whole period between 15 April 2013 and July 2015, in other words, whether there was a contact in existence between assignments. There can have been no contract during the periods between assignments unless there was mutuality of obligations between the parties during those periods. It is clear from the terms of the Interpreter Services Agreement and the way in which it was implemented in practice that the First Respondent was not obliged to provide the Claimant any work or to pay him and the Claimant was not obliged to do any work unless and until he expressed an interest in an assignment and he was sent an assignment confirmation. It was clear from that that in the periods between assignments there was no mutuality of obligations between the Claimant and the First Respondent, and in the absence of mutuality of obligations there was no contract between the parties during those periods. I, therefore, concluded that there was not in existence an umbrella or global contract covering the whole period between April 2013 and July 2015.

30 The situation was different when the Claimant expressed an interest in an assignment and he was sent an email confirming that assignment. The Claimant was then obliged to attend at a particular place at a particular time and to provide the interpreting services required. In return for his doing so, the First Respondent was obliged to pay him for the services that he provided. There was, therefore, during the course of each assignment a contact between the Claimant and the First Respondent. The Claimant, therefore, had a number of separate sequential contracts with the First Respondent.

31 I then considered -

(a) Whether under each of those contracts the Claimant was obliged personally to do the work, and

(b) If he was, whether he performed services for and under the direction of the First Respondent in return for which he received remuneration or, on the other hand, he was an independent provider of services who was not in a relationship of subordination with the First Respondent.

32 In considering the first issue, I considered whether the Claimant had a right to substitute another person to do the work and perform the services and, if he did, whether that right was unfettered or there were any restrictions on his right to do so. Clause 3.3 of the Interpreter Services Agreement ("ISA") made it clear that the Claimant could not utilise any other individual or organisation in his place to provide the services under any assignment which he had accepted. Clause 11.8 made it clear that he could not transfer any duties that he had under the Agreement without the written consent of the First Respondent. It is, therefore, clear that under the Agreement the Claimant did not have an unfettered right to send someone else in his place to provide the services that he had agreed to provide.

33 The evidence about what happened in practice was that if an interpreter who had accepted a job could not do it, he could nominate someone else to do it. If that other person was registered with the First Respondent, and the First respondent considered that he had the relevant qualifications and experience to do it, the First Respondent would then give the job to that other person. In such a situation the "nominated" person would not carry out the work as the initial interpreter's substitute under the contract that the First Respondent had with the initial interpreter, but under a new and different contract that would be made with him. That, in my opinion, is not tantamount to a right to substitute, but to a right to suggest someone else with whom the First Respondent can contract to provide the services. There was no evidence before me of any circumstances in which the First Respondent gave written consent for the duties under the ISA to be transferred to someone else other than the interpreter with whom it had made the Agreement. There was no evidence of someone else providing the services under the Agreement with the Claimant and the Claimant being paid for that work.

34 Having considered all those matters, I concluded that in reality the Claimant did not have a right to substitute some other person to provide the services and that he was, therefore, obliged personally to do the work. He did not have an unfettered right to do so and could only do so if the First Respondent consented in writing to his doing so. The First Respondent had an absolute discretion as to whether it gave its consent and there was no evidence before me of it having ever done so in practice.

35 I then considered whether the relationship between the Claimant and the First Respondent was that of worker and employer or that of independent provider of services and client/customer. That entailed looking at the level of autonomy or independence that the Claimant had, the extent to which he was in a relationship of subordination to the First Respondent and/or integrated into the First Respondent's business. In determining that issue I took into account the following factors:

(a) The Claimant had the freedom to choose for whom he worked, when he worked, where he worked and what work he agreed to do. He could choose how often he worked, the hours he worked and the locations at which he worked. He could refuse any job without having to give any reasons and often did so. The First Respondent could not compel him to accept any particular job;

(b) The First Respondent was not obliged to give the Claimant any work and it was not obliged to pay him when he was not working. The Claimant was only paid for the services that he provided.

(c) The Claimant was not obliged to provide his services exclusively to the First Respondent but was free to, and in fact did, provide interpreting services to other organisations. It might well be that the First Respondent was an important client of the because it was responsible for obtaining the interpreting services required across the Ministry of Justice

(d) The Claimant was not interviewed, inducted or trained by the First Respondent.

(e) The Claimant did not work in the offices of the First Respondent and the First Respondent did not provide him with any equipment (such as telephones, laptops, stationery) or support to carry out his role.

(f) The First Respondent did not direct or control how the Claimant provided the interpreting services, and it did not supervise his work or carry out any appraisals of his performance. The Claimant did not report to a manager. He was a professional who worked independently.

(g) The Claimant was responsible for his tax liabilities and national Insurance contributions and the First Respondent did not deduct those payments at source.

(h) The First Respondent did not pay the Claimant sick pay, holiday pay, pension contributions or redundancy. At no stage while providing services to the First Respondent did the Claimant question or challenge this or argue that he was entitled to any of those payments.

(i) The Claimant had to indemnify the First Respondent for any loss that it suffered as a result of his negligence or wrongdoing and was potentially liable to pay a fee in respect of any complaints about the inadequate provision of his services.

(j) The Claimant was obliged to comply with the First Respondent's Code of Professional Conduct. That Code, however, did no more than set out the standards to which any professional interpreter would be expected to adhere. Even in the absence of that Code, the Claimant as a professional interpreter would and should have behaved in accordance with the standards set out in that Code. Any client would expect an interpreter to adhere to those standards. The Dress Code simply set out the standard that would be expected in the formal settings in which interpreters worked. The First Respondent did not require the Claimant to wear a uniform or to carry any other item with its logo.

(k) There was a policy for dealing with complaints about the Claimant. That is not inconsistent with the relationship being that of a professional and a client. The sanctions that could be imposed included a warning letter (setting out the client's dissatisfaction and warning that further shortcomings could lead to the

services not being used), not using his services again or withholding payment of fees for the service provided.

(l) The contract was clear that it was not creating an employer and worker relationship but that the relationship was a freelance professional interpreter providing his services to the First Respondent.

36 The picture that emerged from the above factors was of a qualified and registered professional person who provided professional services to a number of clients and enjoyed a large degree of independence and autonomy in respect of to whom, when, where and how he provided his services. He was not integrated in the First Respondent's business and there was not the level of subordination one would expect in a worker-employer relationship. The Claimant was not inducted, trained, or supervised by the First Respondent, he was not told how to do his work and his performance was not managed, he did not work in its offices and it did not provide him with any support or equipment. All that the First Respondent required of him was that he provide his services in a professional way. Any client of a professional would expect that and would cease to use the service of the professional if they were not provided to the requisite standard. Having considered all the evidence, I concluded that the Claimant was not employed by the First Respondent, within the meaning of section 83(2) of the Equality Act 2010 but was an independent self-employed professional providing services to clients.

37 In order for the Second Respondent to be liable under section 41 of the Equality Act 2010 it would have to be a "principal". A "principal" is defined in section 41(5) as a person who makes work available for an individual who is employed by another person and is supplied by that other person in furtherance of a contact to which the principal is a party. It follows from my conclusion that the Claimant was not employed by the First Respondent that the Second Respondent could not be liable under section 41. The Second Respondent could only be liable under section 112 of the Equality Act 2010 if the First Respondent could be found to have contravened Part 5 of the Act. It would only contravene that Part if it was the Claimant's employer. Again, it follows from my conclusion that the Claimant was not employed by the First Respondent that the Second Respondent could not be liable under section 112.

Employment Judge Grewal
6 September 2017