EMPLOYMENT TRIBUNALS

Claimant: Mr Steven Ayre

Respondent: South Derbyshire District Council

Heard at: Nottingham

On: Friday, 16 March 2018

Before: Employment Judge Legard (Sitting Alone)

Representation
Claimant: In person
Respondent: Mr Howlett, of Counsel

RESERVED JUDGMENT

The Tribunal lacks jurisdiction to hear the claim brought under ss.47B and 48 of the Employment Rights Act 1996 on the basis that the Claimant is not a worker as defined in either s230(3) or s.43K of the same Act. Accordingly, the claim is struck out.

REASONS

1. Background and Issues

1.1 By a claim form dated 29th September 2017 the Claimant brings a complaint alleging that he suffered a series of detriments on the ground

that he has made a number of protected disclosures. Both parties accept that the claim is one of 'whistleblowing detriment' only. Within his claim form the Claimant describes himself as a "Contractor who has gained employment status" and, within the narrative of the complaint, says as follows:

> *"I am a managing partner in our firm of partners, who has a written contract and a verbal contract with [the Respondent], and I believe I have attained employee status with them over the years."*

1.2 The Respondent has not pleaded specifically to the facts of the alleged disclosures and/or detriments and, at this stage of the proceedings, has elected to defend the complaint on jurisdictional grounds, contending that the Claimant does not qualify as a 'worker" within the meaning of the Employment Rights Act and is therefore unable to bring a so-called "whistleblowing" complaint before a Tribunal.

1.3 Accordingly the matter was set down for a preliminary hearing for the purposes of determining the following question:

Whether the Claimant was, at the relevant time, a 'worker' within the meaning of s230(3) Employment Rights Act or s.43K of the same Act and, if not, whether the claim should be struck out.

2. Evidence

2.1 I heard oral evidence from both the Claimant and his wife and, on the Respondent's behalf, Mrs Summerfield (a Financial Services Manager) and Mr James (a Manager in Housing Services). All witnesses were cross-examined although the Claimant elected to ask very few questions of both the Respondent witnesses. I found all witnesses to have given their evidence truthfully although it is fair to say that my determination of the issues in this case hinged less upon credibility and more upon interpretation of the facts and the application of the statutory 'worker' definitions to those same facts.

2.2 In the build up to this case there had been various arguments and counter arguments on the subject of 'incomplete disclosure'. Those had been canvassed before and adjudicated by various Employment Judges. As a consequence I was presented by two bundles of documents. The first, prepared by the Respondent, amounted to approximately 630 pages and the second, produced by the Claimant, contained a number of documents marked alphabetically A-Y. Whilst I read all documents referred to within the respective witness statements, I explained to both parties that it was their responsibility to call to my attention any other document which they considered may be relevant to their respective cases.

3. Findings of Fact

3.1 The following findings of fact are made on the balance of probability. I did not undertake any factual enquiry into the underlying facts in support of

the substantive elements of this claim but deliberately restricted my enquiry to those matters which were potentially relevant to the question of the Claimant's status.

3.2 The Claimant is one of two managing partners of a firm called Universal Contracting ('Universal'). The other managing partner is Simon Dowell. Mr Dowell and the Claimant are co-signatories on the firm's bank account. The Claimant described it as a "50/50 enterprise" although the matter in which profits come to be shared remained somewhat opaque.

3.3 According to the Claimant, the firm was formed approximately 12 years ago. Its registered address is on the Boardmans Industrial Estate at Swadlincote in Derbyshire. It is essentially a family business with close relatives of both the Claimant and Mr Dowell 'employed' by the partnership in a number of roles according to their individual specialism.

3.4 In evidence the Claimant stated that profits generated by the firm were distributed amongst the family members but, as I have indicated above, it was not made entirely clear as to what proportion. Indeed it is difficult to ascertain precisely both the number and identity of the partners in the firm. The firm produced formal partnership accounts and detailed tax returns were completed each financial year.

3.5 Within the Respondent's bundle there is a 'Pre-qualification questionnaire' dated June 2014. This document completed by Universal formed an important part of the contract tender process with the Respondent. Within that document Simon Dowell is described as the 'senior partner.' In cross-

examination the Claimant described Mr Dowell as 'primarily office based' and himself as a 'dealmaker.' Either way it is clear that the Claimant occupied a strategic and senior managerial position. Indeed, in evidence, he said (referring to the firm's business in general) "none of it would have happened without me".

3.6 Within the same document the firm is described as having carrying out a full programme of works in partnership with the Respondent, covering all trades, and states the following:

- *Our company is made up of a partnership basis which creates loyalty, and by having regular meetings offers a vital input from all partners.*

- *Our partners in the trade side of the business are all time-served tradesmen in carpentry, joinery, plastering, plumbing etc.*

- *Over the years we've built up an extensive network of sub-contractors to assist us: to cover every trade in the current NHF Schedule of Rates booklet.*

- *We are a local company run by local people who only use local sub-contractors. We deal with all hazardous scenarios ie. Asbestos, which we work closely with Burton Environmental.*

- *We feel that all of the contract can be achieved in-house, with only electrics and gas works being sub-contracted.*

3.7 At paragraph 2.4 of the same document, Universal gave details of a number of clients for whom they have undertaken contracts of a similar nature. These included Castle Park Construction; Swadlincote Maintenance and J Whittaker.

3.8 In evidence the Claimant accepted that none of the above companies had any connection whatsoever with the Respondent. Indeed the Claimant went further and said that Universal has a number of 'other' customers. He also agreed under cross-examination that Universal undertakes a wide variety of work over and above building maintenance including, but not limited to, carpet fitting. A number of the contracts referred to in the document are noted as 'on-going.' Within the same document are listed a number of Universal's sub-contractors and these include plumbers and electricians as well as those who specialise in, for example, asbestos removal.

3.9 The Claimant is described as an individual whose principal responsibility was to 'liaise with all trades, ordering and first point of contact for Health & Safety.' Mr Dowell is described as the person with responsibility for the overall running of the programme. The declaration is signed by Mr Dowell as Senior Partner and is preceded by a confirmation on the part of Universal that they have in place appropriate insurance including Employers Liability Insurance up to £10,000,000.

3.10 It is common ground that Universal, for a number of years prior to the contract renewal, had been carrying out a range of general building

maintenance and cleaning work on behalf of the Respondent. Following the pre-qualification questionnaire referred to above, Universal was successful in securing a new contract. Universal entered into a so called 'JCT' contract whereby it agreed to provide the Respondent with a general maintenance and minor repair service in respect of the latter's housing stock. The agreement was a standard JCT contract embodying all relevant and necessary terms and cannot by any stretch of the imagination be described as a sham agreement. The duration of the contract was 3 years expiring in May 2018 but incorporating an option to extend that to 2 further years (i.e. 2020).

3.11 The agreement, signed off by the Claimant in his capacity as 'Managing Partner,' incorporated a Contracts (Rights of Third Parties) clause specifically excluding any person not a party to the contract from enjoying any rights under the same (clause 1.5). The parties are defined as 'employer' and 'contractor.' The Respondent is the 'employer' and Universal the 'contractor.'

3.12 The Respondent reserves the right to place orders for similar work with other contractors that supply any of the materials, goods or equipment necessary for carrying out the same.

3.13 Clause 3.2 provides a right for the contractor to sub-contract, albeit only with the prior consent of the Contract Administrator (such consent not to be unreasonably withheld). For the purposes of administrating the CIS (the Construction Industry Scheme), however, the Respondent is described as the 'Contractor.' The CIS is a scheme whereby 20% of any

labour elements shown on a contractor's invoice are deducted and paid directly to HMRC and such sums count as an advance payment towards any NI or tax contribution liabilities of the contractor.

3.14 The document also incorporates a Schedule of Rates. This Schedule has a list of definitions and is extremely detailed with each and every item of work separately and individually costed and described. Indeed, there are over 300 pages of the bundle dedicated to the same. They include rates for cleaning and clearance.

3.15 It was also originally intended that the parties would enter into a 'Framework Agreement' designed to run alongside the JCT. This was to be an agreement regulating how and under what circumstances the maintenance and building services would be allocated and/or shared out between the three successful tendering firms or 'framework contractors' namely Universal, Harvey & Clark Limited and M D Building Services Limited. Harvey & Clark Limited and M D Building Services Limited also signed a JCT.

3.16 This 'framework' agreement was designed to comply with EU Rules of Procurement enabling the Respondent to issue work to members of the framework without having to go through a competitive tender process at every stage. As it was, however, this agreement was never in fact signed.

3.17 Prior to the award of the JCT contract Universal were required to complete a TUPE spreadsheet, in the event that the building maintenance service was brought in-house or potentially awarded to an alternative contractor.

Document K in the Claimant's bundle is an incomplete copy of a TUPE spreadsheet which I have been invited to assume relates to the Claimant despite the fact that he is not named upon it. Working on that assumption, however, the Claimant is described as 'manager/screeder/cleaner/admin', and 'as a partner who has become an employee because of governance.' In terms the Claimant is being held out as an employee of Universal for TUPE purposes. The Claimant contends that the fact of being named on the TUPE information spreadsheet (notwithstanding the fact that no TUPE situation arose) is evidence pointing to 'employee' or 'worker' status. This spreadsheet was one of many completed by Universal (it is not clear by whom) in respect of all those engaged directly or indirectly on the Council's building maintenance and/or cleaning contracts at the time of the re-tendering exercise.

3.18 The Claimant also asserts that, running more or less alongside the JCT contract, there was a separate cleaning contract between Universal and the Respondent. That said, the Claimant has produced precious little evidence in support of his contention. There is no signed agreement operating independently of the JCT arrangement and, as stated above, it is clear that the JCT agreement provided for, amongst other things, cleaning to be undertaken. The Claimant's case is that this cleaning contract was essentially sub-contracted to and serviced by Liz's Cleaning Services, a firm run by his wife. The Claimant also made mention of another cleaning firm, namely Stella's Cleaning Services, run by Simon Dowell's sister indicating that this firm also undertook a degree of cleaning work on behalf of the Respondent.

3.19 In evidence, Mrs Ayre stated that she was the managing partner of Liz's Cleaning Services and the effective 'boss.' There were, according to Mrs Ayre, a further 4 partners of her business although her husband was not one of them. When questioned Mrs Ayre stated that her husband 'occasionally' worked for the business and, by way of example, had helped prepare and/or screed flooring in void properties. According to Mrs Ayre Liz's Cleaning Services was a sub-contractor for Universal on various contracts but also performed a number of other contracts for different private clients in its own name. Mrs Ayre played no part herself in the running of Universal. The Claimant acknowledged that he did not receive any payment from Liz's Cleaning Services.

3.20 The Claimant alleges that this separate cleaning contract was awarded to Universal (and not to himself) on a verbal, informal basis, that Universal sub-contracted the work to his wife's cleaning partnership and that he occasionally undertook floor screeding himself. In evidence the Claimant emphasised that his role, on the cleaning side, was to manage and/or supervise the contract on behalf of Universal (for example, checking that window cleaners had done their job correctly).

3.21 Universal were not paid separately for any cleaning services and the Claimant agreed that any remuneration in respect of the same formed part of the overall building maintenance contract. He said as follows: *"It all drops into the partnership account, out of which we pay the wages."*

3.22 Universal is registered for VAT (in order to register for VAT a business needs to be generating turnover in excess of £85,000 per annum). Over

the past several years (from 2011 until December 2017, i.e. including years both before and after entering into the 2015 JCT contract) Universal has submitted formal invoices to the Respondent in respect of services tendered. The net amount paid to Universal by the Respondent over this period is in excess of £3,000,000. VAT charged to the Council was approximately £550,000 and the deductions made in accordance with CIS amounted to approximately £300,000 over the same period.

3.23 Within the bundle there was a sample of the c.800 or so invoices and payment certificates generated over this period. Those documents are formally headed and addressed with the appropriate VAT and payment reference numbers. They describe the work undertaken, give order numbers and, in the case of payment certificates, give further details and authorisation signatures from the Contract Administrator.

3.24 As stated above, Universal Contracting was subject to formal accounting and audit procedures.

3.25 There is no evidence of the Claimant himself having submitted an invoice or purchase order and no evidence of the Claimant having received any payment in his own name. Unsurprisingly he does not feature on the Respondent's payroll. In evidence the Claimant accepted, quite candidly, that Universal bore the risk of undertaking the Respondent's work at pre-determined and agreed rates. For example, if labour and/or materials were to increase, Universal would bear the consequential impact on their profit line. Equally, however, if Universal delivered the contract with

greater efficiency then any subsequent increase in profit would be theirs to keep. Of course Universal priced their work to make a profit not a loss.

3.26 The Claimant's claim before the Tribunal includes an allegation that the Respondent was in breach of the JCT agreement by awarding work to Universal's competitors and/or bringing work in-house. He also alleges that the Respondent had been altering otherwise agreed rates to their advantage. There are other elements to the 'whistle-blowing' allegation, namely concerns over asbestos removal and testing. However, in evidence the Claimant stated that the core feature of his complaint was that the Respondent had failed to 'honour' its side of the bargain, stating "*that's why we are here.*"

3.27 The Claimant raised his whistle-blowing complaint with the Respondent and the same was the subject of an external auditor's investigation conducted by Ernest & Young. It is no part of my task at this stage to enquire into the relative merits or otherwise of the whistle blowing complaints, including whether or not the Claimant has made disclosures of information that qualify for protection. My task is restricted to determining whether the Claimant qualifies as a worker, either within the 'standard' or 'extended' definitions.

3.28 However, the Claimant contends that the very fact of the Respondent agreeing to deal with and investigate his complaint of whistle-blowing is evidence of itself that the Respondent considered him to be an employee or worker. In support of that assertion, the Claimant points to the Respondent's own policy on whistle blowing which states:

"The policy applies to all:

- *Employees of the Council;*
- *Casual workers;*
- *Employees of contractors working for the Council, for example agency staff, builders and drivers;*
- *Employees of suppliers;*
- *Those providing services under a contract or other agreement with the Council;*
- *Voluntary workers working with the Council;*
- *Consultants engaged by the Council*

The policy does not to apply to 'a client'. In those circumstances the client should raise his or her complaint through the comments, compliments and complaints procedure."

3.29 The outcome letters pertaining to the whistleblowing investigation are addressed to the Claimant personally but directed to Universal's business address.

4. Relevant Law

4.1 Over the years the question of who qualifies as a worker for the purposes of bringing an employment-related complaint before a Tribunal has produced an abundance of case law. In this particular case we are concerned with the whistle blowing provisions found in the Employment

Rights Act and whether the Claimant qualifies as a worker either under the wider definition (see s.230(3)) or the narrower one (s.43K)). Should the Claimant not satisfy the definition of worker under either definition then his complaint must inevitably fail on the ground that the Tribunal lacks jurisdiction to hear the same.

4.2 s.230(3) Employment Rights Act provides as follows:

"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, whether express or implied and (if it is express) whether oral or in writing, 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 …"

4.3 Those that fall within s.230(3)(b) (often referred to as "limb (b) workers") encompass those who might otherwise be self-employed independent contractors (and indeed often are for tax purposes). This definition essentially comprises two elements. First the individual must be under an obligation to do work personally and second the person for whom the work is done must not be a client or customer of a business being run by the

individual. This qualification is of course important, otherwise the truly self-employed could come within the definition.

4.4 In *James v Redcats [2007] IRLR 296* the EAT held that there should be a careful distinction between employees, workers and those engaged in their own business. Potentially relevant factors might include the right of substitution and consideration of 'the dominant purpose.'

4.5 In the cases of *Jivraj v Hashwani [2011] IRLR 827* and *Halawi v WDFG UK Ltd [2015] IRLR 50* the requirements of personal service and subordination were emphasised. In *Bacica v Muir [2006 IRLR 35* factors such as the preparation of one's own accounts, being free to work for others and not being paid when not working were all considered relevant factors.

4.6 More recently, in connection with the so called 'GIG' economy, 'worker' status has come under further scrutiny. In *Pimlico Plumbers v Smith [2017] IRLR 323,* Etherton MR gave a very useful summary of the considerable case law. Important features of that case included the absence of a business/client relationship; the lack of de facto control exercised over the claimant and the existence of a particularly strong restraint of trade clause should he leave. Underhill LJ suggested that a Tribunal Judge's discretion to look beyond the written material and at the practical working of the arrangement. He did so whilst emphasising that all such cases are ultimately highly fact sensitive.

4.7 In *Byrne Brothers v Baird [2002] IRLR 96* ostensibly 'self-employed' building workers who worked in practice for one employer and did so personally, on a regular basis and whilst under supervision were held to be workers. In the EAT's opinion, the category created by s.230(3)(b) was designed for this type of labour-only sub-contractor. This was followed by the Court of Appeal in *Wright v Redrow Homes Limited [2004] IRLR 1126.* In that case the Court of Appeal emphasised that the relevant test is not whether the parties' understanding or expectation was that the work would be performed personally but whether it was their intention that there should be an obligation to perform it personally. This is more to do with the form of their original agreement than with what actually then happened in practice.

4.8 The original guidance from the DTI (now BEIS) suggested that the (s.230(3)) worker definition would apply to anyone working for another except for the genuinely self-employed. The current guidance on Working Time Regulations puts it as follows:

> "If you are self-employed, running your own business, and are free to work for different clients and customers [the regulations] do not apply to you".

4.9 In *Cotswold Developments Construction Ltd v Williams [2006] IRLR 181* Langstaff J said as follows:

"A focus on whether the purported worker actively markets his services as an independent person to the world in general (…) on the one hand, or

whether he is recruited by the principal to work for that principal as an integral part of that principal's operations will in most cases demonstrate on which side of the line a given person falls."

4.10 In *The Secretary of State for Justice v Windle & Arada [2016] IRLR 628* the Court of Appeal (Underhill LJ) emphasised that: "mutuality of obligation is an essential ingredient for both the employee definition and the worker." In so deciding the Court cited the judgment of Elias LJ in *Quashie v Stringfellows Restaurant Ltd [2013] IRLR 99.*

4.11 More recently (due in part to the significant public interest with whistleblowing) Parliament has extended the definition of worker for the purposes of whistleblowing or PIDA complaints. Accordingly, a person who is not a worker under Section 230(3) may nevertheless become a worker in the extended definition if he or she falls within any one of the five categories set out in s.43K ERA.

4.12 The potentially relevant sub-section in this case is 43K(1)(a). This sub-section is primarily aimed at "agency and any other such workers" and provides as follows:

"…where the worker is introduced or supplied by a third person, and the terms of employment are substantially determined by the supplier or the receiver or both."

The standard definition of worker in s.43K(1)(a) is wide enough to cover a case where there is no direct contractual relationship, for example because of the intercession of a service company.

4.13 An example of how s.43K(1)(a) fall to be applied can be seen in the case of *Croke v Hydro Aluminium Worcester Ltd [2007] ICR 1303* which was canvassed before me by both parties. Furthermore, in the important case of *McTigne v University Hospital Bristol NHS Foundation Trust [2016] IRLR 742* where it was held that:

1) The extension can apply where the individual has a formal contract of employment with the agency (the supplier), but the allegations are made against the end user (the receiver)' and

2) It is irrelevant whether either or both of the supplier and receiver 'substantially' determine the terms as long as the individual does not.

4.14 That said, the reference to 'terms' is to <u>contractual</u> terms so the extension cannot apply if there is no contract at all - *Sharpe v Bishop of Worcester [2015] IRLR 663*. In any case of ambiguity a Court or Tribunal should seek an interpretation that promotes the extension rather than frustrates it - *Keppel Seghers Ltd v Hinds [2014] IRLR 754* and *Day v Health Education England [2017] IRLR 623*.

5. Submissions

5.1 Both the Claimant and Mr Howlett, on behalf of the Respondent, made oral closing submissions. Mr Howlett also provided written submissions, in which he referred to a number of authorities including *Cotswold Developments; Redrow Homes* and *Croke v Hydro* (supra.)

5.2 The Claimant relied heavily on the case of *Croke* arguing that, in a similar way to the Claimant in that case, he was "introduced and/or supplied by" Universal to the Respondent and accordingly qualifies as a worker within the extended definition under s.43K(1)(a). The Claimant argued that a direct contractual relationship between himself and the Respondent was not a necessary ingredient in order to qualify as a worker. The Claimant also contended that it was incumbent upon the Tribunal to adopt a purposive interpretation of any relevant provision so as to accord with Parliament's clear intent to include individuals within, as opposed to exclude them from, the protection of the whistleblowing provisions.

5.3 On the Respondent's behalf, Mr Howlett argued that there was no contract of any kind whatsoever as between the Claimant personally and the Respondent and that deficiency was in itself fatal to any claim for worker status under s.203(3) or s.43K. He further argued that at s.43K(1)(a) had no effect because the Claimant did not work for the Respondent nor had he been introduced or supplied by Universal to the Respondent. In any event, the JCT, when combined with an objective analysis of the PQQ (Prequalification Questionnaire), shows that the terms upon which the Claimant worked, if he worked at all, were not determined whether

substantially or otherwise by either the Respondent or Universal. In terms Mr Howlett argued that none of the necessary ingredients for worker status were present in this case.

6. Conclusions

6.1 There is no possibility of the Claimant being an employee or worker as defined by s.230(3)(a) simply because he has never entered into or worked under a contract of employment with the Respondent. Neither, in my judgement, does the Claimant qualify as a 'limb (b) worker' for the purposes of this complaint. At no stage has the Claimant, as an individual, entered into any contract of any kind, whether oral or in writing, with the Respondent. There is simply no evidence to support a conclusion that the Claimant has undertaken to perform personally any work for the Respondent or indeed for Universal.

6.2 It is abundantly clear on the evidence that the Claimant occupied a strategic managing partner role within a relatively substantial commercial firm and that at all times the only contractual relationship of any significance in this case was that which existed between Universal and the Respondent.

6.3 Both the prequalification questionnaire and JCT are evidentially important within the context of this case. I am satisfied that the JCT accurately reflected the way in which the services were performed 'on the ground.' Both documents demonstrate unequivocally that the terms under which the building maintenance service, which included any cleaning services,

was provided by Universal to the Respondent were the product of a commercial arms-length negotiation. Universal was VAT registered. It turned over between £500,000 and £700,000 per annum. Universal received from the Respondent in excess of £3,000,000 over a period of 6 years; used its own subcontractors; was responsible for its own employees, workers and/or subcontractors and was answerable to HMRC for all of its accounting and tax issues. Universal determined how and in what proportion its profit and/or loss was distributed within the partnership. Universal bore all of its own risk and equally was the sole beneficiary of any profit generated. In keeping with its relative size, the firm had in place £10,000,000 of Employer Liability cover. Universal regularly serviced other contracts via its own (carefully selected) sub-contractors and, insofar as its contract with the Respondent was concerned, it provided that service in accordance with prescribed rates and in circumstances where there was no warranty as to the actual amount of work that the Respondent would provide under it.

6.4 The Respondent was but one, albeit very important, client of Universal. At all times Universal dealt with the Respondent as it would any other client, especially in so far as invoicing, purchasing orders and payments were concerned.

6.5 The fact that the Respondent elected to investigate the Claimant's whistleblowing concerns in accordance with its whistle-blowing policy is of no support to the Claimant. The policy clearly states that it applies to "those providing services under a contract or other agreement with the Council". It was perfectly reasonable for the Respondent to interpret the

policy in a manner beneficial to the Claimant. On any view the Claimant was not a 'client' of the Respondent. In any event, even if that were not the case, whether or not the Respondent elected to do so is not nor could it be a determination of worker status. The 'employment' status of an individual is ultimately a matter for the Tribunal.

6.6 The Claimant does not become a 'worker' under either the 'narrow' or 'extended' definition by occasionally helping out with the cleaning of void properties. It is clear, on the evidence, that this service was undertaken either by Liz's or Stella's Cleaning Services. The Claimant was not a partner, employee or worker of either. He was not paid by either firm. The Claimant may have occasionally undertaken screeding tasks but his principal role was to assist in the management and supervision of the overall contract which included cleaning. This was entirely consistent with his role as the Managing Partner of the contracting firm, namely Universal.

6.7 On any view, it cannot be realistically argued that the Claimant was 'introduced' or 'supplied' by either Universal or indeed Liz's Cleaning Services to clean void properties or, even if he was, that the terms on which he was engaged to do that work were substantially determined by someone other than himself – be that the Respondent, Universal or Liz's Cleaning Services or a combination of the three. At all material times, insofar as he undertook any work, he did so of his own volition, in his own time and in accordance with what he considered to be necessary.

6.8 Alongside Mr Dowell, he was the 'de facto' boss of this enterprise. He described himself as a 'dealmaker', the person who maintains a strategic

oversight on behalf of the firm on a number of important and profitable contracts. He might occasionally help out when required (sometimes on relatively menial cleaning tasks) but he never did so on anyone else's terms but his own.

6.9 In the circumstances, and despite interpreting the wider definition in as purposive a manner as possible, I am unable to conclude that the Claimant qualifies as a worker under either section. For the avoidance of doubt, for the same or similar reasons given above, I do not consider the Claimant to be a worker under s.43K(b), the so-called "homeworker" provision. There was no contract with the Respondent of any description let alone in respect of work done in a place not under the control or management of the Respondent.

6.10 Likewise the remaining sub-sections under s.43K have no application in this case. Accordingly, and despite a great deal of sympathy for the Claimant who clearly feels considerably aggrieved by the Respondent's (or more specifically certain individuals within the Respondent) actions and behaviour over recent years, I must, in the light of my conclusion, strike out his claim on the basis that the Tribunal lacks the jurisdiction to hear the same.

Employment Judge Legard

Date: 16th April 2018

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

17 April 2018

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FOR EMPLOYMENT TRIBUNALS