



EMPLOYMENT TRIBUNALS

Claimants

Mrs E Giganova & Others

AND

Respondents

Tax Free 4 U Ltd & Others

Heard at: London Central

On: 8 November 2018 and
22 November 2018

Before: Employment Judge Walker (Sitting alone)

Representation

For the Claimant: Mr R Robison - FRU

For the Respondent: Mr Khalilov - Solicitor

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

- 1 Ms Giganova was an employee and
- 2 Mrs Kolii was a worker.

REASONS

1. This was a Preliminary Hearing to consider the question of whether the First and Second Claimants were employees or workers of either of the Respondents, Tax Free 4 U Limited and Bank 4 You Group.
2. The Claimants, Ekaterina Giganova and Daria Kolii both gave evidence. The Respondent produced three witness statements but none of the Respondent's witnesses attended the Tribunal.
3. The Tribunal also had a file of documents some of which were in Russian with no translation.

The Issues

4.1 Whether Ms Giganova was an employee or worker of the Respondent for her purposes of the Employment Rights Act 1996 (“the Act”).

4.2 In relation to the question of whether she was an employee, whether Ms Giganova worked under a contract of employment. To that end, the various tests of employment fell to be considered.

4.3 In relation to the question of whether Ms Giganova was a worker; whether:

(a) she undertook to do her work personally; and

(b) the Respondent’s status was not that of a client or customer of any profession or business undertaking carries on by Ms Giganova.

4.4 In relation to the question of whether Mrs Koliï was a worker for the purposes of the Act, whether:

(b) she undertook to do her work personally; and

(b) the Respondent’s status was not that of a client or customer of any profession or business undertaking carries on by Mrs Koliï.

4.5. In the case of the status of worker, it was not disputed that both worked under a contract and had undertaken to perform the services personally. Therefore, the key issue was whether the Respondent was a client or customer of any profession or business carried on by either of the Claimants.

4.6 Additionally there was an issue as to whether the contracts the Claimants had entered into, which were described as consultancy agreements, were determinative of their status as argued by the Respondent or should be considered a sham as argued by the Claimants.

The Facts

Ms Giganova

5. Ekaterina Giganova worked for the Respondent for four months from August 2017 until December 2017.

6. She was contacted through LinkedIn and asked to attend an interview with Liudmyla Ivasyuta. She was told that she would be offered the job. She was given a written consultancy agreement to sign, and, in the course of her evidence, she agreed that at the outset she had been willing to work in a self-employed position because she had previously been self-employed.

7. In practice, once Ms Giganova attended at work she was expected to operate under the direction and control of the Respondents. She was told she had to be in the office from 9am until 5.30pm with one hour for lunch.

8. Ms Giganova was provided with a computer but this was very slow so she brought in her own laptop which she used for much of her work.

9. One aspect of Ms Giganova's role was to represent the Respondent at a conference about tax free and duty-free goods in Cannes in France. Her focus was to sign up businesses who would use the product which was a system of facilitating more easy tax returns on items purchased by non-residents who are eligible for tax free shopping.

10. Ms Giganova described her duties as follows: cold calling and emailing clients from the office, arranging meetings with potential clients, sending them presentations, pitching to them about the Respondent's business, presenting a letter of intent to them if they were interested and follow-up calls. The office duties included ordering business cards for a boss, organising an article in Drapers Magazine and promoting the Respondent's services. In two cases she found people to work with her being a graphic designer and a creative writer.

11. Ms Giganova was required to report to management on her progress on a weekly basis. To this end, she was required to agree on a Friday what exactly she would be doing the following week and then it was checked to see how much she had done. In order to be paid, she had to submit invoices which she did.

12. In or about September 2017, the Respondent wanted Ms Giganova to attend a conference in Cannes. She was not able to go to Cannes without a work visa because this was in the Shengen Area and she had to submit proof of her employment. On 6 September 2017, Mr Merton Smith who I have noted signed off as a Chief Executive Officer for Tax Free 4 U Ltd wrote a letter addressed to whom it may concern as follows:

'I can confirm that Ekaterina Giganova is working for Tax Free U Ltd in the full-time position of Senior Business Developer. Ekaterina started working with Tax Free 4 U Ltd on 17 August 2017 and her current salary is £30,000 per annum. As she has been with us for less than a month on this occasion, we cannot provide pay slips.

The letter went on to confirm the dates of travel to France for a business trip and to confirm that the Tax Free 4 U Ltd guaranteed sufficient funds for Ms Giganova's stay and place of accommodation etc and therefore asked and requested a visa.

13. The Tribunal understands that the letter was written with the express purpose of supporting the visa application and that without this confirmation that Ms Giganova was an employee, she would not have been eligible for the visa and not been able to attend the Cannes conference as the Respondent's representative.

14. Ms Giganova had a business card although I was not able to be shown one. She was also given a company email which was e.giganova@taxfree4u.com.

15. On occasions Mrs Giganova went to certain parts of London such as Sloane Street and Bond Street knocking on the doors of various retail establishments without any prior introduction. She would usually go in the morning and be back by lunch time. She would report to the Respondent's manager – and had to show the business cards she collected from the people she spoken to and explained the outcome of the visit and whatever the next step would be in terms of promoting the Respondent's business. She did contact her own contacts as well as cold calling other entities.

16. Once Ms Giganova was hired by the Respondent, she ceased to promote her profile as a self-employed person.

17. The Respondent referred to the Russian documentation and asked Ms Giganova to confirm what it said which she did, which was to the effect that she had lied at one point about some aspect of the work to a client. I was asked to consider Ms Giganova's lack of credibility, given she had been prepared to lie. She also amended her LinkedIn page to remove some of her work and again it was said this indicated a lack of credibility.

18. Ms Giganova did not market her services once she began to work for the Respondent and I accept her explanation that she devoted herself to this work.

Contract

19. The primary contract at the beginning of Ms Giganova's relationship with the Respondent was titled "consultancy agreement". The parties to it were Tax Free 4 U Ltd which was described as the Company, and Ms Giganova, who was referred to as "Person".

20. The Services were described as

Presentation "TaxFree Refund service for Customers,
Mobile application of "TAXFREE" uploading to Customers' devices,
Prepaid cards selling for Customers,
Complete reports,
Complete the Preliminary Sales Plan.

The Services were also to include any other tasks that the parties might agree on.

21. There was reference to the supervision of phone calls and it said in the case, of any complaint received from third parties regarding phone calls made by the Person, the Company will check the records of such phone calls.

22. The contract expressly included at Clause 1.4 "Person hereby agrees to provide Services for the Company Monday – Friday from 9am to 6pm at Oracle

House, 8-12 Welbeck Way, London, England W1G 9YL, United Kingdom. In case of absence the remuneration specified in Article 2.2 of this Agreement will be proportionately amended.”

23. Under “Payment Terms” it provided that until each respective monthly’s week the Person shall issue a weekly report on the basis of Road Map to the Company for the Services provided during last week including number of hours spent on provision of Services.”

24. It explained that “Remuneration shall amount to the fixed sum showed in Annex 1, (including all applicable taxes that shall be paid by the Person) which shall accrue from day to day and be payable monthly directly to the Person’s bank account.”

25. The Road Map had to be executed “no less than 70% from total scope” which the Tribunal understand meant that the remuneration depended on the relevant Claimant achieving 70% of the tasks specified on the Road Map, which had to be agreed each week.

26. There was a confidentiality clause.

27. There was no provision for any substitution of any other person.

28. The contract expressly confirmed that the Person has the necessary qualifications, experience and abilities to provide the services.

29. Clause 6.3 provided “Person shall act hereunder as an independent contractor and shall not be, or represent that it is or maybe deemed as an employee or agent of the Company for any purpose whatsoever.

30. It also provided at clause 6.4, “Person will not voluntarily, or by operation by law assign or otherwise transfer its obligations under this Agreement without prior written consent of Company.”

31. There was an annex to the Agreement which was a key performance indicator (preliminary sales plan) which appeared to indicate the number of department stores, fashion groups and top brands that Ms Giganova had to sign up to the product.

Mrs Koli

32. Mrs Koli gave evidence that she was a graphic designer. She had moved to the UK with her husband and was not employed or doing any work at the time when the Respondent first approached her. She accepted she had been a freelance graphic designer in the past.

33. The work she carried out was done was primarily from the premises of the Respondent although there was one period of time when Ms Koli was in the

Ukraine when the Respondent agreed that she could do her work from there while she was travelling.

34. Her work required a fast computer and the computer supplied by the Respondent was inadequate for the level of sophistication and power she needed, so she brought in her own laptop computer. Using that laptop, she was able to continue to work while she was abroad.

35. Sometimes Mrs Koliï worked a short while from home because she would receive requests from other operations within the Respondent organisation before she left for work and she would deal with these before coming into the office. The majority of the time she had to work from the office between 10am and 7pm at night.

36. The work Mrs Koliï did was largely given to her by Liudmyla Ivasyuta and Ms Yevgen Sova. Sometimes other people asked her to do other things such as business cards. They also asked her to assist in presentations for the various brands which included Tax Free 4 U, Brands 4 U and Bank 4 U. She had an email which was d.Koliï@taxfree4u.eu.

37. Ms Koliï did not have a business card as it was not necessary for her to have one. The work she did was graphic designing.

38. Mrs Koliï received an email from the Respondent which was dated 19 November 2017 and was titled "how to avoid being the first candidate for redundancy". It set out a series of rules about necessary behaviour such as not being late, not whining and complaining and so on. It did not address any specific events but seemed to be a general admonishment.

39. Mrs Koliï also received a further email dated 14 November 2017 which was sent to all@bank4you saying lunch time should be from 1 pm to 2 pm Kiev/London time and not any other time. Additionally, on 18 January 2018 she received another email from i.ivasuta@taxfree4u.eu complaining about why she was constantly late for work and demanding an explanation. It is clear from her reply that she had suffered an unpleasant incident on the way to work and had to be taken to hospital that day but that she stayed longer at work and didn't go to lunch if she was late when she had an assignment.

40. Mrs Koliï entered into a similar document to that I have detailed for Ms Giganova. It was also titled "Consultancy Agreement", but while it stated it was entered into in September 2017, the actual date had not been completed. The parties were identified as Dan Business Solutions which was said to be a Belize company which was the Company, and Mrs Koliï who was described as the "Person".

41. It contained mostly the same clauses that I have recited above which appear in Ms Giganova's contract, though some provisions were changed such as the list of Services and the Remuneration.

42. The clause about the Road Map referred to tasks given in the internal CRM system of the Company and required the Road map to be completed to 90 per cent rather than 70 per cent.

43. By Clause 1.4 Ms Kolii agreed to provide the services for the company Monday to Friday from 10am to 7pm at Oracle House, 8-12 Welbeck Way, London, England W1G 9YL. She was also required to issue a weekly report based on the Road Map for the services. There was a confidentiality agreement and a probationary period of three months starting with the effective date.

44. Clauses 6.3 and 6.4 were identical to the clauses in Ms Giganova's contract, so provided for Mrs Kolii to be an independent contractor and not being able to assign her obligations under the Agreement without the prior written consent of the Company.

Submissions

Claimants

45. The Claimant submitted that the case of **Autoclenz Ltd v Belcher & Ors [2011] UKSC 41** was relevant in terms of deciding whether the consultancy agreements might be a sham. The Tribunal was urged to look behind them and it was argued that it was evident from the witness evidence that the consultancy agreements did not explain the true nature of the agreement.

46. The Tribunal was also referred to the cases of **Pimlico Plumbers Ltd and another v Smith [2018] UKSC 29** and **Cotswold Developments Construction Ltd v Williams [2006] IRLR 181** and it was pointed out that

- (a) both contracts set out the hours and location of work.
- (b) both the employees were integrated into the team with the Respondent and were part of the team.
- (c) Ms Giganova was asked to bring business cards to show the result upon knocking on doors.
- (d) Mrs Kolii was asked to produce perfect work. In one case the Respondent complained in writing about the time keeping of Mrs Kolii.

47. The Claimants were not in control but rather than manager for the Respondent was in control. Overall the Claimant suggested that Ms Giganova was an employee but, if not, a worker and that Mrs Kolii was a worker.

Respondent's Submissions

48. The Respondents started by addressing the contracts and it was submitted that fraud was not pleaded and therefore it was not possible for the Tribunal to consider the question of whether the contracts were a sham.

49. In relation to Ms Giganova it was suggested that she had her own contacts as well as company contacts and approached them. She had a degree of control over choosing which client she was intending to approach.

50. It is not unusual for a contractor to prepare a submission as to what they intend to do and how they would go about it.

51. In relation to the letter written by the CEO regarding Ms Giganova and her status, the Respondent argued that the CEO did not have authority. It was suggested that it was clear that he was asked to prepare the letter and that he would not have necessarily have known the true position. It was pointed out by the Tribunal that the Tribunal could not take evidence by way of submissions.

52. In terms of credibility, it was submitted that Ms Giganova had admitted that she had lied specifically in one of the whatsapp messages. She had explained to the Respondent that she had lied to a customer and she also admitted providing misleading information on her LinkedIn profile. In the circumstance, it was suggested that she was not a credible witness and her evidence should be rejected.

53. In summary the Respondent argued that Ms Giganova used her own equipment, she had control over how she did her work, there was no obligation on the parties to do the work and the Respondent was concerned that they had not been able to obtain the tax returns which would also have been relevant to showing how she showed her status. The Respondent then suggested that Ms Giganova was a worker.

54. In relation to Ms Kolii the Respondent said that the contract for services was one where she was self-employed and that Ms Kolii, as a graphic designer was a member of a profession or at least undertaking a business. She was engaged to provide particular business services and had provided graphic design services to various companies within the Respondent group.

55. The Respondent complained that there was no evidence that they would have liked to verify whether Ms Kolii continued to provide services for other people. Ms Kolii also worked from home part of the time and from the Ukraine for two weeks and had a degree of control as to how to provide her services.

The Law

56. Section 230 of the Act provides

Employees, workers etc.

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” (except in the phrases “shop worker” and “betting 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;

and any reference to a worker’s contract shall be construed accordingly.

57. The case of **Pimlico Plumbers Ltd and another v Smith [2018] UKSC 29** identified two cases which would assist in the determination of whether someone is a client or customer of an undertaking and thus a worker, assuming they perform the services personally.

58. The first is a citation from the case of **Cotswold Developments Construction Ltd v Williams [2006] IRLR 181**

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

59. The other case was the case of **Hashwani v Jivraj [2011] UKSC 40, [2011] 1WLR 1872.** and the citation was

“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. “

60. The question of whether someone is an employee or not has been considered in case law and there are several tests, but the key test is usually called the test of mutuality of obligation. This requires the Tribunal to assess whether the employer is bound to provide work and whether the employee is bound to perform it. That is sometimes referred to as the irreducible minimum.

61. There is a further test referred to as the control test, which applies where the employee is under the control of the employer in terms of how and where and when they perform he work.

62. Then there are considerations as to whether someone is integrated into an organisation and whether they provide their own equipment and bear any risk.

63 The case of **Autoclenz Ltd v Belcher & Ors [2011] UKSC 41** is authority for the proposition that written documentation may not accurately reflect the reality of the relationship between the parties.

64. The case makes it clear that the focus must be to discover the actual legal obligations of the parties. To carry out that exercise the tribunal will have to examine all the relevant evidence. That will include the written term itself, read in the context of the whole agreement, as well as evidence of how the parties conducted themselves in practice and what their expectations of each other were. In the Autoclenz case, Smith LJ was quoted at para 51, 52, 53 and 55 of her judgment in **Protectacoat Firthglow v Szilagyi [2009] EWCA Civ 98 CA**.

"The kernel of all these dicta is that the court or tribunal has to consider whether or not the words of the written contract represent the true intentions or expectations of the parties, not only at the inception of the contract but, if appropriate, as time goes by."

"52. I regret that that short paragraph [ie para 51] requires some clarification in that my reference to 'as time goes by' is capable of misunderstanding. What I wished to say was that the court or tribunal must consider whether or not the words of the written contract represent the true intentions or expectations of the parties (and therefore their implied agreement and contractual obligations), not only at the inception of the contract but at any later stage where the evidence shows that the parties have expressly or impliedly varied the agreement between them.

"where there is a dispute as to the genuineness of a written term in a contract, the focus of the enquiry must be to discover the actual legal obligations of the parties. To carry out that exercise, the tribunal will have to examine all the relevant evidence. That will, of course, include the written term itself, read in the context of the whole agreement. It will also include evidence of how the parties conducted themselves in practice and what their expectations of each other were. Evidence of how the parties conducted themselves in practice may be so persuasive that the tribunal can draw an inference that that practice reflects the true obligations of the parties. But the mere fact that the parties conducted themselves in a particular way does not of itself mean that that conduct accurately reflects the legal rights and obligations. For example, there could well be a legal right to provide a substitute worker and the fact that that right was never exercised in practice does not mean that it was not a genuine right."

65. Additionally Aikens LJ was referred to again when he "warned against focusing on the "true intentions" or "true expectations" of the parties because of the risk of concentrating too much on what were the private intentions of the parties.

"What the parties privately intended or expected (either before or after the contract was agreed) *may* be evidence of what, objectively discerned, was actually agreed between the parties: see Lord Hoffmann's speech in the *Chartbrook* case at [64] to [65]. But ultimately what matters is only what

was agreed, either as set out in the written terms or, if it is alleged those terms are not accurate, what is proved to be their actual agreement at the time the contract was concluded. I accept, of course, that the agreement may not be express; it may be implied. But the court or tribunal's task is still to ascertain what was agreed."

66. It was noted that "while employment is a matter of contract, the factual matrix in which the contract is cast is not ordinarily the same as that of an arm's length commercial contract."

67. In addition, Aikens LJ was quoted again from his judgement at para 92 as follows:

"92. I respectfully agree with the view, emphasised by both Smith and Sedley LJ, that the circumstances in which contracts relating to work or services are concluded are often very different from those in which commercial contracts between parties of equal bargaining power are agreed. I accept that, frequently, organisations which are offering work or requiring services to be provided by individuals are in a position to dictate the written terms which the other party has to accept. In practice, in this area of the law, it may be more common for a court or tribunal to have to investigate allegations that the written contract does not represent the actual terms agreed and the court or tribunal must be realistic and worldly wise when it does so. ..."

63. In summary it was noted "the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part.

Conclusions

64. This was a case in which there had originally been four Claimants and two Respondents. At this hearing I was only required to consider the position of two of the Claimants.

65. There was some scope for argument about the identity of the correct Respondent but this was not a matter which we had any time to address during the course of this hearing and I have therefore assumed that the Respondent is a proper Respondent for these purposes.

66. Although both Claimants worked at the same location, and there was clearly a connection in terms of the identity of the parties for whom they worked, which is why their claims were consolidated, I have taken their situations separately and considered them individually.

67. The Respondent's representative had argued that it had asked for tax returns but the Claimants had not provided these. I did not consider this was a

significant problem. In practice it was possible to deal with this in the course of the evidence. The question of what her tax returns had said was put to Ms Kolii but she had not yet reached a point where she was due to file a return. The same question was not put to Ms Giganova.

Ms Giganova

68. The document entered into between Ms Giganova and the Respondent is drawn up and expressed to be a consultancy agreement and it warrants that Ms Giganova is a self-employed person. However, in practice the arrangements between the parties were not, taken all together, consistent with self-employment. Following the approach in Autoclenz, I examined the factual situation.

69. Ms Giganova was required to be based within the Respondent's organisation. She was required to devote all her time between specific hours of the day consistently to the Respondent. She was censured if she did not maintain those hours precisely.

70. The level of reporting which was required from her was detailed. While it would be normal to have an indication of the services, it would undertake, in this case, on a weekly basis Ms Giganova had to produce a detailed report on what she proposed to do which was checked and verified by the Respondent's manager.

71. There was mutuality of obligation in that Ms Giganova was expected to attend for work and the Respondent expected to provide her with work. It was expected that there would be an ongoing working relationship, if not on an ongoing basis, at least week by week.

72. In relation to the question of control, the Respondent exercised the considerable control over Ms Giganova. She had to explain where she was, what she was doing and was censured when she did not meet their expectations in relation to her time keeping.

73. In terms of integration within the work force, Ms Giganova had business cards and an email address which indicated that she was part of the Respondent organisation.

74. All of the characteristics of the relationship were consistent with employment.

75. Importantly, in September 2017, when Ms Giganova had the opportunity of attending a conference in Cannes which the Respondent thought would be useful, the Chief Executive wrote a letter holding her out as eligible as an employee for a visa. It is a serious matter to represent an individual as an employee if that is not the case. I do not have any evidence to explain that and in the circumstances the Respondent's suggestion that this was incorrect and that the Chief Executive did not have authority is simply unreasonable. A Chief

Executive will always have ostensible authority to carry out the task of identifying an employees' status within their organisation. A Chief Executive would have ostensible authority both to communicate information of that nature and would be expected to do so correctly. There was no evidence that some formal action had been taken which limited the Chief Executive's authority in that respect. The visa authorities in question would have the right to rely on that letter as being a proper representation of the Respondent company's position.

76. It suggested by the Respondent's that not only was that letter written without authority, but the contents are incorrect. There is no evidence to support this argument other than a witness statement from Liudmyla Ivasiuta who describes herself as a manager Tax Free 4 U Ltd. She says her role is to "support negotiation with potential partners for business work and work with freelancers during their probation period for the Tax Free company service." She states that Mr Smith had no authority from the company to write those letters and was on probation. In her witness statement Ms Ivasiuta said: 'I am prepared to give evidence at any Tribunal hearing'. She signed the statement of truth in the witness statement on 7 November 2018, i.e. the day prior to this hearing, but did not attend the hearing and despite enquiries made after the Tribunal requested them, the Respondent's representative was unable to explain exactly why she had not attended.

77. A manager in a more junior position is not normally in any position to question the role of a more senior person, particularly the Chief Executive. In all the circumstances, and having been unable to test the witness statement of Liudmyla Ivasiuta, I must reject its content.

78. A letter of the sort written to support a visa for Ms Giganova is a representation of a serious nature. It must be assumed to be correct.

79. Further, as noted above, I find the circumstances meet the various tests which are applied to assess whether an individual is an employee or not which have been developed in case law and over many years.

80. Additionally, following the approach in Autoclenz I find the consultancy agreement did not represent the parties' position as time went by, if indeed, it ever did, and certainly by the time of the Chief Executive's letter. In all the circumstances, I am satisfied that Ms Giganova was an employee.

Mrs Koli

81. So far as Ms Koli is concerned, it seems clear to me that she was under the control of the Respondent and acting within its operation in a manner consistent with modern working practices.

82. While she used her own equipment to some extent, this is not unusual in the modern working environment. She had fixed hours, she was expected to attend at the office almost all of the time except with the prior agreement of the Respondent or where she was asked for help earlier when she was at home. On the occasions when she did not attend at the address listed in the contract, this

was because she was on a pre-arranged holiday which the Respondent agreed to or contacted at home before she was able to get to the office and therefore doing work in the more adaptable way that is common practice these days.

83. It is clear that the duties and tasks she was assigned were those of an in-house graphic designer. There was no correlation between the tasks she was assigned and her pay. Her pay was only dependant on the hours of work.

84. She had no other clients and did no marketing to obtain clients. When asked her about her tax return, it became clear she had not yet reached the date when one would be required to be filed and that none existed. Her evidence was that she had no other work at the time when she was approached and discussed starting with the Respondent. She had moved to a new country. She was hired to work within the Respondent premises to undertake any tasks within her expertise which were asked of her.

85. It was submitted by the Claimant that Ms Kolii was a worker and she certainly undertook her services personally. There was no indication that she did not, or that she had the ability to sub-contract. She was not carrying out a business or profession. While it is possible for graphic designers to operate independently, it is quite clear that the Respondent was well aware at the time of entering into the contract with Ms Kolii that she did not have a portfolio of the clients.

86. The test for a worker does not require me to go into the questions of control and integration to the business which would apply if it was contended that she was an employee.

87. I am satisfied on the evidence that Mrs Kolii was a worker as argued by her representative. In all the circumstances, I find Ms Giganova was an employee and Ms Kolii was a worker.

Employment Judge Walker

Dated: 18 December 2018

Judgment and Reasons sent to the parties on:

18 December 2018

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For the Tribunal Office