EMPLOYMENT TRIBUNALS

Claimant: **Ms. Lanre Fagbe**

First Respondent: **Allegis Group Limited**

Second Respondent: **Santander UK PLC**

Third Respondent: **Mr. Amrick Singh Thandi**

PRELIMINARY HEARING

Heard at: Birmingham by CVP **On: 1 & 2 February 2021**

Before: Employment Judge Dean

Representation
Claimant: Mr. R. Downey, of counsel
First Respondent: Mr. T. Perry, of counsel
Second Respondent: Ms. G. Roberts, of counsel
Third Respondent: in person

JUDGMENT having been sent to the parties on 3 February 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issues

1. The issues that I am required to determine at this preliminary hearing are as set out Employment Judge Harding at a hearing on the 4th November 2020 [page 75 a -g paragraph 12]. In relation to the employment status it is agreed the issues now required to be determined between the parties are identified as:
    a. whether in respect of the first and the second respondent the claimant was a "worker" as defined by Section 43 (k) of the Employment Rights Act ("ERA 1996")

b. whether in respect of the first Respondent the claimant is an "employee" as defined by Section 83 of the Equality Act 2010

c. whether in respect of the Second Respondent the claimant is a "contract worker" as defined by Section 41 of Equality Act.

Background and evidence

2. By way of background this hearing has been conducted over Cloud Video Platform ("CVP"). I have been provided with a bundle of documents that extends over 271 pages. I have heard evidence from Ms Fagbe and on behalf on the second respondent from Mr Stewart Smith Head of Operations and remediation at second respondent, a company whose job includes managing the relationship between Santander and Resource Suppliers such as Allegis Group Ltd the first respondent. No evidence has been heard from any witness on behalf of the first respondent. Mr Thandie the third respondent has been in attendance at the hearing and although invited to do so he has chosen not to participate in the examination of any of the witnesses or to make submissions on the issues which he correctly identifies are not directly relevant to his potential liability in relation to the claimants' status as employee or worker of either or both the respondents. I have been referred to limited number of documents within the bundle those references have been noted by me.

Law

3. The statutory provision to which I have been referred include:

Employment Rights Act 1996 ERA s43K

43KExtension of meaning of "worker" etc. for Part IVA.

(1)For the purposes of this Part " worker " includes an individual who is not a worker as defined by section 230(3) but who—

(a)works or worked for a person in circumstances in which—

(i)he is or was introduced or supplied to do that work by a third person, and

(ii)the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them,

(b)contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and would fall within section 230(3)(b) if for

"personally" in that provision there were substituted "(whether personally or otherwise)",

(ba)works or worked as a person performing services under a contract entered into by him with the National Health Service Commissioning Board under section 83(2), 84, 92, 100, 107, 115(4), 117 or 134 of, or Schedule 12 to, the National Health Service Act 2006 or with a Local Health Board under section 41(2)(b), 42, 50, 57, 64 or 92 of, or Schedule 7 to, the National Health Service (Wales) Act 2006,

(bb)works or worked as a person performing services under a contract entered into by him with a Health Board under section 17J or 17Q of the National Health Service (Scotland) Act 1978,

(c) works or worked as a person providing services in accordance with arrangements made—

(i)by the National Health Service Commissioning Board under section 126 of the National Health Service Act 2006, or Local Health Board under section 71 or 80 of the National Health Service (Wales) Act 2006, or

(ii)by a Health Board under section 2C, 17AA, 17C, . . 25, 26 or 27 of the National Health Service (Scotland) Act 1978, or

(cb)is or was provided with work experience provided pursuant to a course of education or training approved by, or under arrangements with, the Nursing and Midwifery Council in accordance with article 15(6)(a) of the Nursing and Midwifery Order 2001 (S.I. 2002/253), or

(d)is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than—

(i)under a contract of employment, or

(ii)by an educational establishment on a course run by that establishment;

and any reference to a worker's contract, to employment or to a worker being " employed " shall be construed accordingly.

2)For the purposes of this Part " employer " includes—

(a)in relation to a worker falling within paragraph (a) of subsection (1), the person who substantially determines or determined the terms on which he is or was engaged,

Section 230 ERA

230Employees, 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.

(4)In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

Equality Act 2010

41Contract workers

(1)A principal must not discriminate against a contract worker—

(a)as to the terms on which the principal allows the worker to do the work;

(b)by not allowing the worker to do, or to continue to do, the work;

(c)in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;

(d)by subjecting the worker to any other detriment.

(2)A principal must not, in relation to contract work, harass a contract worker.

(3)A principal must not victimise a contract worker—

(a)as to the terms on which the principal allows the worker to do the work;

(b)by not allowing the worker to do, or to continue to do, the work;

(c)in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;

(d)by subjecting the worker to any other detriment.

(4)A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).

(5)A "principal" is a person who makes work available for an individual who is—

(a)employed by another person, and

(b)supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).

(6)"Contract work" is work such as is mentioned in subsection (5).

(7)A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

83 Interpretation and exceptions

(1)This section applies for the purposes of this Part.

(2)"Employment" means—

(a)employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

4. Case law

Uber v Aslam & others [2018] EWCA CIV 2748

Jivraj v Hashwami 2011 UKSC 40

Clyde & Co LLP v Bates van Winkelhof 2014 UKSC 32

Autoclenz v Belcher &others 2011 UKSC 41

Byrn Bros (Formworks) Ltd v Baird EAT /542/01

Croke v Hydro Aluminium Worcester UK EAT/0238/05

5. . Under the provisions of Section 230 of the Employment Rights Act 1996 defines an employee as an individual who has entered into or works under "a contract of employment". I am reminded of the law in AutoKlenz Ltd -v- Belcher & Others [2010] IRLR 70 CA. In particular at paragraphs 87-89:

"Express contracts (as opposed to those implied to the conduct) can be oral, in writing or a mixture of both. When terms are put in writing by the party and it is not alleged that there are no additional oral terms to it, then those terms will, at least prima facie represent the whole of the party's agreement. Ordinarily the parties are bound by those terms where a party has signed the contract….

Once it is established that the written terms of the contract were agreed, it is not possible to imply terms into a contract that are inconsistent with its

expressed term. The only way it can be argued that a contract contains a term which is inconsistent with one of those express terms is to allege that the written terms do not accurately reflect the true agreement of the parties.

Generally, if a party to a contract claims that a written term does not accurately reflect what was agreed between the parties the allegation is that there is a continuing common intention to agree another term, which intentionally was outwardly manifested but, because of a mistake (usually a common mistake of the parties) but it can be a unilateral one) the contract inaccurately recorded what was agreed. If such a case is made, a court may grant rectification of a contract."

6. The learned judgments of the Court of Appeal in AutoKlenz -v- Belcher, and in particular to Aikens LJ's guidance in Lady Justice Smith comments at paragraph 52 of the judgment:

   "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 or 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."

7. Lady Justice Smith continues at paragraph 69:

   "However it seems to me that, even where the arrangement has been allowed to continue for many years with question on either side, once the Courts are asked to determine the question of status, they must do so on the basis of the true legal position, regardless of what the parties have been content to accept over the years."

8. In the Supreme Court AutoKlenz refering to Elias J in Kalwak :

   "*58. In other words, if the reality of the situation is that no one seriously expects that a worker will seek to provide a substitute, or refuse the work offered, the fact that the contract expressly provides for these unrealistic possibilities will not alter the true nature of the relationship. But if these clauses genuinely reflect what might realistically be expected to occur, the fact that the rights conferred have not in fact been exercised will not render the right meaningless.*

   59. … Tribunals should take a sensible and robust view of these matters in order to prevent form undermining substance…"

9. I have been referred in particular by Mr Downy on the claimant's behalf to a number of the authorities to which I am invited to have regard in particular to Auto Cleanse, he reminds me that in dealing with express contracts a

scrutiny ought to be given to them. The Supreme Court in AutoKlenz, referring to Mr Justice Elias in Kalwak, referred to the requirement that employment tribunals look at the reality of a situation when no one seriously expects the worker to seek to provide a substitute or refuse the work offered that fact that the contract expressly provides for these realistic possibilities ought not to alter the true nature of the relationship but, if these clauses generally reflect what might realistically expected to occur, that the facts that the rights have not in fact been exercised will not render the right meaningless and tribunal are recommended to take a responsible and robust view of these matters in order to prevent at form undermining substance. With the guidance of the Higher Courts in mind having, heard evidence from the claimant and Mr Smith and scrutinized the documents placed before me I reach the following findings of fact.

Findings of fact

10. The claimant registered a company known as Silage Ltd on 6th October 2017. The claimant was the sole shareholder and Director of the company the business provided services to third parties as a consultant. The claimant decided to set up the company as a vehicle by which she would provide independent contractor services to end users in a most efficient way. The claimant has confirmed that whenever she has been at work she works as a consultant provided by Silage Ltd she has taken monthly drawings and paid herself dividends by that company. The claimant confirms that she is not an employee of Silage Ltd and does not pay tax and national insurance as an employee at all.

11. In the event, having set up her business in October 2017 the claimant entered into a contractual arrangement with the first respondent Allegis Group Limited in her capacity as the Director Shareholder of Silage Limited. The claimant is a relatively sophisticated individual, she has a Degree and a Masters qualification. The claimant has confirmed that she informed the first respondent when completing the Registration Pack when she expressed interest in providing Self Employed Contractor services to the first respondent and their clients. The claimant entered into a contract; she completed what is known as Own Limited Company Registration Pack

[pages 129 – 135] on the 19th December 2019. She completed all of the checks and compliance documentation that were required. The compliance questionnaire was completed [pages 140 – 144] she confirmed that at that time she was the sole worker providing the services through the only limited company Silage, she was asked to indicate that as the Director of Silage completing the questionnaire whether there were other workers who would be providing the services [page 141] and the claimant in her capacity as a Director of Silage confirmed that she was the sole provider of the services.

12. I have heard evidence from Mr Smith which I accept. I find that if Silage had sought to supply other workers to Allegis, who were then provided to service their contract with Santander UK plc, that other workers provided by Silage may well, within the terms of the contractual capacities between Allegis and Santander, have been approved the supply of another worker through Silage. The only requirement would be that other workers would be supplied, subject only to that person being vetted and having suitable qualifications and experience completing the compliance information as Silage had, nominating the claimant as the consultant provided.

13. The claimant has confirmed her qualifications [page 132], she has a Degree and a Post-Graduation at Masters qualification in Accounting and Financial Management. The Information completed by the claimant of her experience in the compliance questionnaire confirmed that Silage had professional Indemnity Insurance to the extent of £1,000000 and Public Liability Insurance in respect of the services provided by Silage that were supplied by the claimant. Silage provided the Independent Consultancy Services to Aston Carter a brand name within the Allegis Group Limited are one and two Allegis Group Limited clients as customers of its' business. Silage confirmed that they were operating outside of the IR35 arrangements [page 146]. Silage entered into Self Bill agreement with the first respondent [page147 – 148] in which they agreed to invoice Allegis for the services under a self-bill agreement, that documentation was signed on the 9th January 2018.

14. The contract for supply of services to Allegis by Silage was completed on the 10th January 2018 [pages 153 – 176] the key provisions of that arrangement are set out in detail in a contract for supply of services. The supplier agreed to provide the services to Allegis Clients in accordance to the terms of the agreement that was identified as a contract for services. The background confirmed that the contractor is an Independent Contractor who does not work for or under the control of either company that is Allegis or the Client of Allegis. The contractor confirmed that the company that she is in business on her own account and supervised by the client and shall not be entitled to Equal Pay or Equal Rights or other rights afforded to Agency workers on the conduct regulations shall not apply. The contractor is defined within the contract [page 156] as the Independent Individual assigned to the performance of the service and any replacement contractor pursuant to Clause 5.2 below is that the start date who controls and directs their own limited company being the supplier through which they contract and offer their services on an independent basis business to business basis. The terms of the assignment schedule are set out in appendix 1 [pages 178]. The contract provided that there would be daily rate paid of £160 as subsequently varied and that there were no normal working hours [pages 180]

15. I find that the contract between Silage and the first respondent is a contract to supply services, Silage I find were able to provide other contractors subject to suitable vetting of the contractors' suitability. That Silage chose not to engage other contractors to use them in addition to or substitution for the claimant was a matter for Silage and was not a shame arrangement. I have no doubt having heard from Mr Smith that subject to satisfactory vetting and it being in accordance with the Service delivery arrangements between the first and second respondents' other contractors could have been substituted or supplied in addition. The supplier contractor obligations are set out in paragraph 2 of the Contract for supply of services [page 158 – 160] in particular the obligations between the first respondent Allegis and their clients in this case Santander are in heavily regulated environment for provision of financial services. The supplier Silage agreed to provide services in accordance with good industry practice at all times taking

responsibility for way in which the services were performed; in particular paragraphs 2.1.3 - 2.1.12 identify the basis upon which the services were to be provided.

16. I have particular regard at 2.1.9 that Silage would, where necessary, provide at its' own cost for equipment and training for the contractor as was reasonable for the adequate performance of the services and 2.1 .10 that:

"The company or a client's request remedy in the supply contactor's own time at the suppliers own expense any substandard services and where necessary which shall include reperforming the services" "substandard" shall mean any result element stage or product of the services that the client or company reasonably deems as not meeting the standard required under Clause 1.1. above and/or any service specifications set out in the assignment schedule".

17. The contract goes on to provide at 2.1.11:

" *That the company against all loses incurred by the company arising out of any negligent wrongful or fraudulent act or omission of the supplier and or the contractor including without limitation failure to give notice or perform the obligation with in accordance of the agreement."*

18. There was in the arrangements no obligation for the company to provide procure or offer any work to the supplier at any time, [Clause 3.5 page 161].

19. The status of the supplier and the contractor is detailed in page 164 at Clause 4. In particular Clause 4.1.1.2 . 4.1.1. provides that:

"the agreement is not an exclusive arrangement and subject to Clauses 2.1.6 above and 6 below nothing in the agreement should prevent the Supplier or the Contractor from engaging in other services for any third party."

20. 4.1.2 provides:

"*the Company is not obliged to put the Supplier or the Contractor forward for consideration by the Client for the provision of services nor is the Supplier or the Contractor obliged to provide services to the client beyond the termination or expiry of the agreement*."

21. The provisions continue at 4.1.8

"the Supplier shall throughout the Assignment and for a period of 6 years following the End Date hold Indemnity Insurance cover for a minimum of

£1,000 000 per annum and a minimum of £1,000 000 per claim and supply the Company with evidence of that on request. The Supplier is aware that the minimum insurance and type of cover including employers' liability and public reliability cover required by the Clients may increase or be varied from time to time."

22. At 4.1.9 it provides

"the Supplier/Contractor shall, subject to working towards meeting the Clients' objectives and complying with reasonable requests, determine generally how the Service shall be supplied. The parties acknowledge and agree that the Supplier is engaged on the basis that its' Contractor will perform a Service as an independent contractor not supervised directed or controlled by the Client".

23. At 4.2 it provides:

"*the Supplier and the Contractor acknowledge that the Company has not influenced or advised either of them to use a particular engagement method and the Supplier and Contractor have made decisions relating to the status re-numeration and engagement methods of their own volition"*

24. I note that the claimant had been setting up the company Silage in October 2019 and evidences an intention to set up an arrangement by which she as an independent contractor would, through that company, be able to provide services to other companies either through an agency or directly herself. The claimant has acknowledged that she worked as a contractor supplied by Silage through Allegis to Santander UK Plc beyond the termination of the contractual arrangement with Allegis Group Limited. The claimant has confirmed that she has continued to provide her services through Silage as a contractor through the company to end users including St James' and Barclays.

25. The claimant has confirmed that when she took up work through Silage to service the Allegis contract with Santander UK PLC that she worked at the second respondent's premises she was allocated work by the first respondent manager who was contracted by Allegis to work on site at Leicester for Santander. The claimant gives an account that she was targeted to complete 5 or 6 cases a day and as confirmed in the contract between Silage and the first respondent about the claimant's hours of work

was not fixed and she varied them for her own convenience and childcare responsibilities indeed it was the arrangements for her childcaring responsibilities and the flexible nature of the hours of work that led no doubt to some part to the dissatisfaction of the Site Manager. The claimant accepted that not unexpectedly in the event of failure to meet targets the first respondent might terminate the arrangements with Silage. The contractual arrangements with Silage and the first respondent confirm the identities of the supplier and the contractor which provided 5.2 that:

> *"the supplier may from time to time and as soon as possible after being required to do so, without prejudice to other provisions of the agreement, provide a suitable replacement contractor provided that*:
>
> > *"5.2.1. the Company shall be under no obligation to accept such replacement Contractor if in its' or the Client's reasonable opinion such replacement is not wholly suitable (whether by reason of skills, experience, training, qualifications, authorisations); and*
> >
> > *5.2.2 if a replacement Contractor is accepted, the Supplier shall use all due diligence to ensure that handover arrangements are made and shall, at its own expense, be responsible for the handover to the replacement Contractor and shall use its reasonable endeavours to procure that a suitable replacement Contractor is available to perform the Services as soon as possible*."

26 Clause 11 of the contract provides:

> "*11.1 The agreement constitutes the entire agreement between the parties and supersedes all previous agreements and arrangements (if any) whether written or implied between the Company or Supplier and the or the Contractor relating to the Service and all such agreements to the effect of the date of the agreement of this documentation (if any) shall (without prejudice to the rights of the Company or arising prior to the start date in respect of prior breaches by the Supplier or the Contractor of which the Company was not aware be deemed to be terminated by mutual consent with the effect of the Start Date so that nothing in this clause shall exclude or limit the liability to of any party in respect of any fraud"*

27. The claimant's evidence contained in her witness statement which was adopted as her evidence in chief provides no evidence of the claimants'

integration with respondents' business or the organization whether of the first or the second respondent. So far as the onsite oversight by the first respondents' manager of the claimant once tasks were allocated to the claimant, it is plain how she undertook those tasks and completed them was, as she confirmed to be, in a manner determined by her employing her experience and expertise.

28. The claimant's company Silage and the claimant herself were not prevented from working elsewhere or providing services to others provided only that Silage and the contractor were subject to restrictive covenant operating for a period of 6 months following the termination of the agreement in so far as it related to the first respondents' client arrangements.
29. The claimant was the sole Director and shareholder of Silage and has since the termination of her contract with the first respondents' continued to work with Huntsworth on contracts for their clients in St James Place and Barclays. Although the claimant refers to having had the right to substitute she says that does not reflect the reality of the situation. The contract is the evidence before me the claimant maybe a Director and sole Shareholder of Silage however, that company has not chosen to exercise the right to substitute the claimant as the contractor however, although that right has not been exercised there is nothing to suggest to me that were it to be exercised neither the first respondent nor the second respondent would make any objections to that arrangement having regard to the provisions of Clause 8.2 page 169.
30. I find that the claimant through Silage had a right of substitution and to that end the contractual arrangements do not provide a sham arrangement.
31. The company Silage submitted invoices to the first respondent and those invoices, although generated by the first respondent from their records, were paid to Silage. Silage contracted to provide services for the assignment to the second respondent for a continuous periods that began on the 10th January 2018 and was subsequently extended to 30th September 2018 and beyond. The claimant I find worked to complete the tasks that were set subject to the targets of the second respondent, the end client.
32. The claimant has acknowledged that how the job was done was to be determined by her exercising her skills and expertise and was not at the

control of either of the respondent's whether the first or the second. Although Mr Downey refers to the claimant having signed documents as the contractor being supplied by Silage the Supplier. The fact that Silage and the claimant were informed of the wisdom of obtaining legal advice is not lost upon them; the claimant chose to read and sign the documentation whose words were plain they are not couched in what might be described as 'legal jargon' their meaning and effect was plain and set out in contractual documentation which I have no reason to believe was anything than a true reflection of arrangements between the parties. I find the written documentation reflects the reality of the situation.

33. Once the Supplier was issued a copy of the contract that was subject only to the vetting of the Contractor in this case the claimant. The claimant was able to determine the times and hours that she worked and how she undertook the tasks that were assigned to her. There is no evidence of the claimant being integrated into the first respondent's business nor into the second respondent's workforce and business arrangements. On a day to day basis the claimant was not supervised in the way that she worked other than the work had to be undertaken at the Leicester location of the Santander UK PLC and was subject to the claimant using the Santander systems to meet with compliance with regulatory requirements.

34. I am forced to conclude that in this case there was a clear business to business between the Allegis Group Limited and Silage Limited. There is no intention for the claimant to become an employee of either the first respondent or the second respondent or for that matter of Silage. The claimant's early evidence has confirmed she was not an employee of Silage and takes drawings and dividends from that company. There is not sufficient integration with either of the respondent's businesses. Silage invoices for the work done by the claimant, the Contractor and how payments were made by Silage to the claimant were a matter of privity between the two of them.

35. I have been referred to the contractual arrangements between Allegis and Santander and to the Statement of Work page 125. The arrangements between the two respondent's was that Allegis agreed to provide a Manager on Site at Leicester Carlton Park and the second respondent pay to the first respondent monies for their supply of skilled contractors to deliver a service.

The statement of work was signed on the 4th December 2017 with the commencement date of 15th January 2018 with an initial completion date being the 30th June 2018. Personnel provided by the first respondent to work on the engagement based at the second respondent's site at Carlton Park consultants would be supplied in two phases on the 15th and then the 22nd January 2018 in two separate cohorts the first of 32 consultants, the second of 30 consultants to deliver the description of service and deliverables. The second respondent set out a specification of the role types that they required to be satisfied within the scope of the contract and the contractors supplied by Allegis were given access to the Santander system and was required for regulatory compliance. The requirement for Allegis or their contractors to be given access to the system the second respondent allowed any contractors to be supplied provided that they were vetted before having access to the second respondent's system.

36. I find that the second respondent did not prevent Silage Limited supplying or substituting additional contractors or providing additional contractors within the scope of the contractual arrangements between the first and the second respondents'.

37. I heard lengthy arguments put to me in an oral submission was by counsel on behalf of the claimant and first and the second respondent's having regard to the statutory provisions and the authorities to which I have been guided.

38. I consider first the issue whether or not, in respect of the first or second respondent, the claimant was a "worker" as defined by Section 33k of the Employment's Rights Act. The terms on which the claimant worked were undoubtedly determined by the agreement between and Silage and Allegis. The contract was not with the claimant personally but rather she was the signatory of the behalf of Silage a company of which she was the shareholder and sole Director. The claimant is not identified as a worker under Section 230(3) of the Employments' Rights Act 1996, in particular of Limb (b) in so far as it refers to:

" any other contract whether express or implied or if express whether oral or in writing whereby the individual undertakes to do or perform personally any work or service 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."

39. The claimant was not a party to the contract in her capacity as an individual. She was a signatory contract in her capacity as a shareholder and Director. The claimant was not required to personally perform any services. Terms under which the claimant worked were not substantially determined by the first or second respondent, they were determined by Silage making an agreement with the first respondent that the contract was a business to business contract between the first respondent and the Silage. The claimant as a Director and Shareholder of that company chose to enter into that contractual arrangement and in her capacity as a contractor supplied by Silage she chose how to do tasks that she was contracted to do subject to regulatory compliance.
40. I conclude that the claimant throughout was an independent contractor and there was no individual contract between the claimant and the first respondent nor between the claimant and the second respondent.
41. Mr Downy on behalf of the claimant has suggested that the contract was one that was entered into whereby the claimant did not intend terms regarding the first respondent and the person being that the claimant worked for.
42. I remind myself of the analysis undertaken by the Supreme Court in Auto Klenz and the reference to the historical authorities to which they had regard. In essence I have considered whether the documents that exist between the parties reflect the contractual arrangements. There was an express contract rather than an implied contract, it was an express contract reduced to writing and signed by both parties, the first respondent and Silage by the claimant acting as a Director and Shareholder.
43. There is nothing in this case to suggest that the contractual arrangements were a sham. I look at the reality of the situation I am satisfied on the particular facts that this was a case where the worker, the claimant in this case was a self-employed contractor engaged by Silage via Allegis to work at Santander assisting the delivery of the contractual commitments between the first and second respondent. The claimant in advance of any of the contractual arrangements which she reached in this case had set up her own business and, as a director of it, provided her services to her business

indeed she used that business to contract later with other companies to deliver a service to their clients by making her services available through Silage.

44. In this case I am satisfied that the reality is not that the claimant satisfies the requirements of Section 203 and the claimant was not a worker whether of the first or second respondent as defined by Section 43k of the Employment Rights Act.

45. Considering whether in respect of the first respondent the claimant was an employee as defined by Section 83 of the Equality Act 2010. The requirements of the Act identify employment as meaning employment under a contract of employment, a contract of apprenticeship or contract personally to do work, on my findings of fact there was not a contract for the claimant to personally do work, Silage had the right to take steps to substitute and replace or assign additional contractors to the contract with Allegis Group Limited, subject only to their compliance with regulatory requirements and vetting. In those circumstances in light of the findings I have made I conclude that in respect of the first respondent the claimant is not an employee as defined by Section 83 of the Equality Act 2010.

46. Turning finally to the questions to whether or not in respect of second respondents' Santander UK PLC the claimant was a "contract worker" as defined by Section 41 of the Equality Act. The claimant quite clearly was supplied by Silage, the Supplier, who contracted to provide workers to the second respondent Allegis' client Santander. To the extent that Santander UK PLC the second respondent might be considered to be a principal, the claimant has to be employed by another person. I conclude, on the findings of fact that I have made, that the claimant was not employed by the first respondent was not employed by the second respondent and was not employed by Silage Limited and was not employed by anyone that could lead me to conclude that the claimant was, within the definition of "Contract Worker" detailed in the Equality Act 2010.

Having determined all of the issues before me I reach the conclusions that:-

1. The Claimant was neither in respect of the first nor second respondent a worker as defined by section 43K of the Employment Rights Act 1996.

2. The Claimant was not in respect of the First Respondent an employee as defined by section 83 of the Equality Act 2010.

3. The Claimant was not in respect of the Second Respondent a contract worker as defined by section 41 of the Equality Act 2010.

4. The Tribunal does not have jurisdiction to entertain any of the claimant's complaints against the First and Second Respondents which are dismissed.

5. The claimant confirmed that her complaints against the Third respondent of unlawful discrimination because of the protective characteristic are withdrawn and are now dismissed.

6. The claimants complaints before the Tribunal are dismissed.

7. The First Respondent's application for a cost award against the claimant does not succeed.

Employment Judge Dean
22 June 2021