EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100204/21 (V)

Held on 1 September 2021

Employment Judge J M Hendry

Mr J Brush	**Claimant** **Represented by** **Ms E Drysdale,** **Solicitor**
Atlantic Resourcing Limited	**Respondent** **Represented by** **Mr K Maguire,** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was not an employee of the respondent company and accordingly the claims are dismissed.

REASONS

1. The claimant in his ET1 sought various findings, principally that he had been unfairly dismissed from his employment. The company ('ARL') resisted the claims arguing that the claimant was not an employee in terms of the Employment Rights Act 1996.

2. The case proceeded to a CVP hearing on 1 September 2021 to determine at an open preliminary hearing whether the claimant could demonstrate employee status.

Evidence

3. The Tribunal had the benefit of a witness statement from the claimant and also a witness statement from a Ms K McIntosh, an employee with the respondent company. Parties had lodged a Joint Bundle of Documents (JB 1-17). An additional document was lodged on the morning of the hearing (JB 17) without objection.

Facts

4. The respondent company is the specialist recruitment arm of the Petrofac Group. It is in effect an employment agency that engages workers who are then deployed as agency or temporary workers for other companies in the Group. The Group is involved in the oil industry. In this case it provided workers to a floating production, storage and offloading vessel the "Captain FPSO" situated in the North Sea to carry out work for Chevron. The contractors to whom the workers were assigned was Petrofac Facilities Management Limited or PFML who operated the facility.

5. The process for obtaining such staff is that the ''delivery hub'' in the Petrofac Group source a candidate to fill the temporary position and liaise with them providing information such as their personnel details, training and medical certificates. The hub arranges mobilisation details, rates of pay, role, duration of the assignment, PPE and so forth. The delivery hub also facilities the mobilisation of offshore workers who are employed directly by PFML but the PFML HR team co-ordinates their engagement.

6. The duration of any assignment depends on FPML's operational requirements as assignments can be lengthy.

7. From June or July 2016 the claimant was recruited to work aboard the Captain FPSO as a self-employed contractor through the respondent, ARL.

8. The claimant was first engaged by ARL as a temporary worker on 16 January 2018 and placed offshore.

9. In January 2018 he received a telephone call from Lynsey Ritchie in the respondent's Human Resources Department indicating that he could no longer invoice the company for work and he would have to switch to PAYE. Thereafter, the claimant received weekly payslips in which he was given an employee number (JB 65-73). He believed that his position was indistinguishable from that of employees of ARL. He was part of a Stakeholders Pension Scheme run by the respondent.

10. The claimant was given a note of his flights in advance for 2018 (JB17) by ARL. He was to work offshore as part of a maintenance squad organised by PFML aboard the Captain FPSO owned by Chevron.

11. The rates of pay were set by ARL. The claimant did not have any option to negotiate the rates. Any pay rises were communicated to the claimant by ARL. He received a pay rise in or around 2019. The respondent did not contact the claimant to ask if he was available for work. He understood that this was the working pattern he had.

12. The claimant was a member of the trade union UNITE. He understood that they were involved in pay negotiations on his behalf and on behalf of other union members in the offshore oil industry.

13. The claimant worked three weeks on, three weeks off rotation as is normal with workers in the North Sea and on the Captain FPSO.

14. On the Friday or Monday prior to each trip the claimant would receive confirmation of his check-in at NHV Heliport base in Aberdeen Airport. The claimant lives in Ireland so he would book flights in advance to arrive in Aberdeen on time to be flown to the vessel.

15. The claimant's hours were set by ARL. He reported to the Construction squad foreman on the platform, Duncan Dunbar and Ross Hardy, who were provided by ARL and assigned to PFML.

16. The claimant worked as part of the construction/maintenance squad. The work that was carried out was planned by an employee of Chevron. They owned the platform. When the claimant was carrying out a new job on the platform one of the foreman would take him to the site to tell him what he was expected to do and what the schedule of the job was. The claimant was generally supervised by one of the ARL foremen. When time permitted one of the foreman would take the claimant around the platform and tell him and other members of the squad what work was projected for the coming months by Chevron.

17. The work was carried out using work permits created for every trip. The foreman completed health and safety documents.

18. The claimant would complete weekly timesheets and was paid by BACS payment every Friday, one week in arrears and Income Tax and National Insurance was deducted.

19. The claimant's holiday pay was included in his daily rate. He would have to notify the respondent if he wanted to use annual leave during the course of a trip.

20. The claimant was enrolled in the company pension scheme (JB39).

21. In January 2019 one of the ''Petrofac'' foreman on the platform showed the claimant the bed plan for the facility. It showed details of everyone on the platform and their dates and offshore dates would be. This would normally be drawn up three to six months in advance. The claimant's name was on this showing the dates of scheduled trips offshore. The foreman showed the claimant details of change and rotation of his next trip which involved him working two weeks offshore.

22. The respondent provided the claimant with PPE including clothes, boots, overalls, hard hats, safety glasses, gloves and storm jacket. The claimant had a dedicated locker aboard the Captain FPSO where he kept some kit in the locker between trips.

23. The claimant was put on a rigging and locking course during the course of working for the respondent. He was also provided with other training.

24. The respondent had a drug and alcohol testing process which involved random drug and alcohol screening. The claimant required to comply with these procedures. If the claimant was sick he had to report to the respondent using their reporting procedures. He was also expected to provide evidence of fitness to work (JB38-39).

25. The claimant did not pay much attention to the written documentation that he was sent in relation to the assignments with Petrofac. He understood that he was supposed to receive a contract every three months but did not always get one. He did get 'two or three'. He just carried out work as normal.

26. In January 2020 the claimant received a letter from the respondent (JB34) in the following terms:-

"*We are pleased to confirm your engagement with Atlantic Resourcing Limited as Pipefitter commencing on 21 January 2020, initially assigned to Captain FPSO….Terms and conditions of engagement are enclosed in duplicate and we would be grateful if you could sign and return one copy retaining the other for your records.*

Due to the nature of temporary working we cannot guarantee continuity of engagement. These terms and conditions of engagement will be effective until such time as we cannot offer you future assignments. Should this occur you will receive confirmation that these terms and conditions of engagement will be terminated."

27. The terms and conditions were enclosed. They contained the following conditions:-

"*3.0 The assignment*
The Employment Business shall be under no obligation to obtain any Assignments for the Temporary Worker and any failure to do so shall not give rise to any liability whatsoever on the part of the Employment Business.

11.0 Holidays
Temporary Workers are entitled to statutory leave in accordance with the Working Time Regulations 1998 as amended. Under the Working Time

Regulations 1998, the Temporary Worker is entitled to 5.6 weeks' leave per leave year.

Temporary Workers contracted to an Assignment onshore over the Christmas and/or New Year period will be entitled to take 2 statutory days at Christmas and 1 statutory day at New Year, which must be taken as part of the statutory entitlement and is not in addition to it.

All leave must be taken during the course of the leave year in which it accrues and none may be carried forward to the next leave year. The leave year will be from the 1st January to 31st December.

Where the Temporary Worker wishes to take any leave to which he is entitled, he should notify his direct Supervisor to which he is assigned at least 4 weeks in advance. The Temporary Worker may not take more than 2 weeks consecutive leave in any leave year unless authorised in writing by the direct Supervisor or Employment Business.

20.0 Conduct of assignment

The Temporary Worker is not obliged to accept any Assignment offered by the Employment Business but if he does so, during every Assignment and afterwards where appropriate he will:

a) Carry out any work or duties allocated to him by the Client to the best of his ability and with the degree of technical and professional skill that the Client could reasonably expect.

b) Cooperate with the Client's reasonable instructions and accept the direction, supervision and control of any person in the Client's organisation to whom they are responsible.

c) Adhere to any relevant rules, regulations and working practices of the Client's establishment (including normal hours of work).

d) Comply with the Client's Code of Conduct and any other Client Compliance Standards as applicable. As and when requested by the Employment Business you shall confirm your compliance mobilisation or on an annual basis.

e) Comply with the Employment Business' data protection policy which is a non-contractual document that the Employment Business reserves the right to amend from time to time.

f) Take all reasonable steps to safeguard his own health and safety and that of any other person who may be present or be affected by his actions on the Assignment and comply with the Health and Safety policies and procedures of the Employment Business and the Client.

g) Not engage in any conduct detrimental to the interests of the Client.

h) Not at any time divulge to any person, nor use for his own or any other person's benefit, any confidential information belonging to or in control of the Client and/or the Employment Business.

i) The Client will be solely responsible for supervising the execution of any work or duties allocated to the Temporary Worker by the Client during the Assignment.

j) Comply with any policy relating to Information Technology, e-mail, internet use, telephone and computer facilities that the Employment Business or Client has in place."

28. The claimant was dismissed on the 30 October 2020.

Witnesses

29. The Tribunal found the claimant generally a credible and reliable witness. His recollection of events appeared good. The Tribunal had a little difficulty accepting his evidence on some matters such as how he could be employed by ARL when they had no presence offshore in that corporate form or how he had become an employee on a change to PAYE taxation. He had after all been a worker or self- employed contractor in earlier engagements through a personal services company but the Tribunal accepts that for many practical purposes it must have seemed to him that he was in an identical position to that of an employee. Ms McIntosh was also generally credible and reliable. Her evidence was not really contentious and she spoke about the system in general adopted by the Petrofac Group and ARL's role the engagement of staff rather than from any detailed knowledge of either the work involved or the claimant's history.

Submissions

30. Ms Drysdale in a well- researched and forceful argument submitted that the Tribunal should find that the claimant was an employee in terms of Section 230 of the Employment Rights Act 1996 (ERA). She took the Tribunal through the definition also referring to the case of **Carmichael v National Power plc** (1999) ICR 1226 and the guidance in that case. She pointed to the necessity of looking at the reality of the situation (Lord Clarke in **Autoclenz Ltd v Belcher** [2011] UKSC 41). The claimant's solicitor discussed the development of the law in this are referencing **Hall v Lorimer 1992** ICR 12 CA and the more recent case of **Uber BV and Others v Aslam and Others** [2021] UKSC 5). The object of the Tribunal's scrutiny she said was to paint a picture of the relationship. The claimant carried out work for remuneration, he was under the control of the company, and there was mutuality of obligations.

She then pointed to the evidence that supported these propositions. The contract she suggested was not inconsistent with a finding that the claimant was an employee. It was artificial to refer to the claimant as a Temporary Worker given the length of time he worked on the same platform.

31. In 2018 the claimant's status had altered. He no longer Invoiced the respondent. He was paid weekly through the PAYE system. His contract was open ended. He was contractually subject to various Codes and was admitted to the respondent's pension scheme. He was represented by his Trade Union, Unite and could not negotiate his pay rate direct. There was she said ample evidence that was suggestive of an employee relationship and mutuality of obligation. For example, the claimant was given his flights in advance for a year. He had a dedicated bed space on the platform, his own locker, tools and PPE. He was expected to turn up for work and give notice of his holidays. He was supervised by two ARL employees who were the ''back to back'' foreman on the maintenance squad he was attached to.

32. Mr McGuire's position was that the claimant was not an employee. He took no quarrel with the definition of employee used by Ms Drysdale or the case authorities to which she referred. It might be, he suggested, that the claimant is properly a ''worker'' but he is not an employee. The starting point of any consideration of these matters was the case of **Ready Mixed Concrete v Minister of Pensions and National Insurance** (1968) All ER 433 and a consideration of whether there was mutuality of obligation. These matters were considered in the recent case of **HMRC v Professional Game Match Officials Ltd** [2020] UKUT 147 (TCC) (6 May) in which it was held that in the case of referees there was no underlying obligation between fixtures so as to link them into a continuous period of employment.

33. The only complicating factor in this case Mr McGuire continued was that until the claimant entered into the contract in January 2020 his status had to be inferred from the background as there was no ''paperwork'' for the

engagements from 2018 to 2020 but the claimant accepted that he had received probably three contracts over this period. It was clearly a 'tripartite' situation. It was clear he submitted that there was no obligation to provide work between assignments. The claimant had not pointed to any. The contract (JBp37) defined the length of the engagement but the fact that the claimant worked on the platform for some time was not evidence of mutuality.

34. This was, as the claimant knew, a standard agency/client situation. It was not possible to seriously suggest ARL had control over the claimant on a day to day basis when carrying out his work. The work was carried out at the behest of Chevron by PFML. It was not consistent with the reality of the situation to suggest ARL had any real control over the claimant's day to day activities. The claimant referred to clause 20 of the contract and the requirement to adhere to various Codes. Significantly 20(d) refers to the ''Client's Code of Conduct'' not a Code prepared by ARL or even PFML. When the claimant was ashore there were no continuing obligations upon him. The claim also fails he submitted on the ''control'' test. The written terms of the contract are consistent with the reality of the situation and can be relied on.

Discussion and Decision

35. Employee has a statutory definition.

Section 230 ERA,:

"(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" …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."

36. Mr McGuire took as his starting point the definition of employee given in the Ready Mixed concrete case which I shall also adopt as my starting point. In that case MacKenna.J.:

"A contract of service exists if these three conditions are fulfilled, (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master, (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master, (iii) The other provisions of the contract are consistent with its being a contract of service."

37. He continued: ***" There must, in my judgment, be an irreducible minimum of obligation on each side to create a contract of service. I doubt if it can be reduced any lower than in the sentences I have just quoted…"***

38. The Judge also made reference to control over how the work was carried out by the employee as being an important requirement.

39. The law has evolved somewhat but the tests of mutuality of obligation and control have survived although broadened. A useful review of the authorities was carried out in the case of **Cotswold Developments Construction Ltd v Williams [2006] IRLR** 18.1 Langstaff J, after reviewing the authorities, stated:

"*54. Since "mutuality of obligation" may be used in either [the minimum necessary to create a contract] sense, or it may relate to those obligations which are of such a nature that they indicate that the contract might be one of service (although there are differences of definition in case-law as to the nature of the employer's obligation) it is important to know precisely what is being considered under that label (to adopt the second general point made by Elias J in Stephenson) and for what purpose. Regard must be had to the nature of the obligations mutually entered into to determine whether a contract formed by the exchange of those obligations is one of employment, or should be categorised differently. A contract under which there is no obligation to work could not be a contract of employment. It may be a contract of a different type: it might, for instance, be a contract of licence (see Royal Hong Kong Golf Club v Cheng Yuen [1998] ICR 131(Privy Council) or even carriage, as was the contract in Ready Mixed. However, the phrase "mutuality of obligations" is most often used when the question is whether there is such a contract as will qualify a party to it for employment rights or holiday pay. In this situation a succession of*

contracts of short duration under each of which the person providing services is either an employee or a worker will give rise to no rights (for instance to pay unfair dismissal or holiday pay) unless (i) the individual instances of work are treated as part of the operation of an overriding contract, or (ii) Section 212 (Continuity of Employment) or, arguably, a continuing employment relationship sufficient to satisfy the principal of effectiveness applies (for holiday pay). Such an overriding contract cannot exist separately from individual assignments as a contract of employment if there is no minimum obligation under it to work at least some of those assignments. 55. We are concerned that Tribunals generally, and this Tribunal in particular, may, however, have misunderstood something further which characterises the application of "mutuality of obligation" in the sense of the wage/work bargain. That is that it does not deprive an overriding contract of such mutual obligations that the employee has the right to refuse work. Nor does it do so where the employer may exercise a choice to withhold work. The focus must be upon whether or not there is some obligation upon an individual to work, and some obligation upon the other party to provide or pay for it…."

40. He continued:

"61. The consequence of our conclusion is that the matter should be remitted to the Employment Tribunal. Having regard to the guidance given in cases such as Sinclair Roche Temperley v Heard and Fellows [2004] IRLR 763 we see no reason why remission should not be to the same Tribunal who have heard the evidence, and are in a position to focus upon the central questions: (a) was there one contract or a succession of shorter assignments? (b) if one contract, is it the natural inference from the facts that the Claimant agreed to undertake some minimum, or at least some reasonable, amount of work for Cotswold in return for being given that work, or pay?"

41. The question in **Cotswold** is whether there is an obligation to undertake some minimum amount of work, and some obligation upon the other party to provide or pay for it. In **Ready Mixed Concrete** there was no guidance as to how much work was required fulfil this element of the test. In the present case I think Ms Drysdale points to the apparently open-ended nature of the engagement with the claimant for example being given his flight information a year in advance and hence his lengthy engagement. Care has to be taken with this analysis which I shall return to.

42. The definition of employee can be contrasted with the definition in the recent ‘‘Uber’’ case in which Lord Leggatt described this statutory definition of worker as having three elements: (1) a contract whereby an individual undertakes to perform work or services for another party; (2) an undertaking to do the work or perform the services personally; and (3) a requirement that the other party to the contract is not a client or customer of any profession or business undertaking carried on by the individual.

Role of Contractual Provisions and interrelationship with evidence

43. The contract provides that the claimant is ‘engaged’ as a ‘temporary worker’. It says the claimant is ‘assigned’ to the Captain FPSO. This could be clearer giving perhaps details of the ultimate client (Chevron) and the contractors involved (PFML). It also does not specify that ARl are the in-house employment agency for the Petrofac Group or outline their role. However, I accept that the claimant was in practice aware that this was the arrangement having worked previously in this tripartite arrangement. I suspect that in practice he drew no distinction between ARL and PFML.

44. It is unfortunate that there was little evidence about the contract between PFML and Chevron or how labour was in fact assigned to the works on the platform and the duration of the contract. The impression the evidence left was that there was a permanent or at least long-term construction/ maintenance squad of which the claimant was a member carrying out programmed maintenance specified by a planner working for Chevron. There was no evidence about an envisaged end date for the works or if it was continuous rather like paining the Forth Road Bridge. There was no evidence that his work was truly temporary or at what point the squad would be slimmed down, if ever, or indeed how long PFML was contracted to operate it.

45. The requirement for the claimant’s services appears to have been open ended. He was given embarcation details for the whole year of 2018 and there seemed at that point at least to be an expectation of work lasting at least for

a year. There was no evidence that this provision of future dates was repeated in 2019 or 2021 in the same way. Indeed, the claimant in his Statement (paragraph 13) states that he was given the dates on a Friday or Monday before each trip. However, later he notes that his name was on the bed plan made up six or so months in advance.

46. The length of the actual assignment is important as there was a dispute between parties as to how long the assignment was. Mr McGuire argued that it was from the start of a particular 'trip' to the end of the trip and that no obligations subsisted between trips. Rather like the referee in the case of **Professional Game Match Officials.** I am not sure the analogy is apt.

47. Mr Brush took the view that his position was indistinguishable from that of a permanent employee on a three on three off rota that is so common in the North Sea oil industry and his assignment was ongoing. In other words, the length of the ''assignment'' could be being part of the construction squad for as long as it was needed. That makes it unfortunate that there was no evidence of the contractual position and whether the squad was set up for a period the duration of which related for example the completion of certain repair or construction works. It might be that because of the age or size or complexity of the asset such a squad is needed all the time. It was not clear.

48. Mr McGuire made the point that the written contract sent out at the beginning of January 2020 was not inconsistent with what happened in practice. That in general terms is correct but as regards the length of the assignment the written terms do not clarify matters much. The covering letter with the contract (JBp34) states that ''due to the nature of temporary working we cannot guarantee continuity of engagement'' Ms McIntosh explained that is an assignment ended then alterative work would be sought for the worker but that there was no guarantee that a worker could be placed elsewhere. However, that is very close to saying that if there is work available then it would be expected, if the worker wanted to maintain his relationship with ARL, that he would accept the work. As the authorities suggest the right of refusal

of work is not in any event conclusive evidence that no mutuality of obligation exists.

49. Assignment is defined in the contract (JBp35) as ‘‘ the period during ’which the Temporary Worker is supplied to render services to the client’’ If the role in the squad was permanently or semi permanently required by Chevron, rather than just for the completion of some particular works, then it was effectively open ended. The claimant after all had PPE on board and an allocated bed space. He had worked on the facility for some years. There were strong suggestions of permanence and a long terms relationship.

50. Mention was made by both parties of the clause relating to Holidays (Clause 11 JB p38). Holiday pay was ‘rolled up’ in the hourly rate. The clauses provide for holiday leave and that all such leave must be taken in the leave year which is January to December. It provides that notice must be given before holidays are taken and that the worker can take no more than 2 weeks consecutive leave without advance written permission. The provisions around holiday pay are suggestive perhaps that the assignment is the total period engaged in some period of work lasting potentially some time (enough to accrue at least two weeks holiday pay). It does not sit particularly well with an assignment lasting three weeks standing as it were alone.

51. The contract documentation is generic and no doubt required to encompass the provision of temporary workers involved in various projects. It does not, however, make it clear that the assignments are each three weekly trips. The respondent understandably did not carry out the onerous task of emailing new contracts to temporary workers for each three-week trip. There was evidence that the respondent had emailed the claimant up to three ‘‘contracts’’ over the space of the two year period up to January 2020. The ‘‘contracts’’ were not produced but it did not seem to be disputed that they were likely to be in similar terms to the contract we have in the Bundle. There was no evidence why there were three or more. The claimant said that he expected a reiteration of the contract terms every three or so months in which case a

considerable number are missing. It may be that their issue reflected additional work being instructed by Chevron or the extension of an existing contract with PFML we do not know.

52. The reality of the situation was as the contract also provided that the role is available as long as the client needs someone to fill it and this was likely to be for an extended period. It is artificial to suggest that the client wanted a temporary worker just for a three week trip when there was a continuing role for a pipefitter on the Construction squad. It made senses from their point of view to have the same person fil the role and they would be acquainted with the facility and the ongoing works.

53. It seems clear that the assignment was in that sense, looking at it from 2018, envisaged as likely to be a long-term position (hence the provision of embarkation details a year in advance). Even it this is wrong the result in practice was that the claimant knew he was being offered ongoing work that work was likely to last into the future and indeed it did last some time irrespective of whether he was one a series of short term three week engagements, on two or three or as I have found on a rather long one.

54. The focus is whether there is some obligation to accept and provide work. Answering the questions suggested in **Cotswold.** There is no doubt that the intention of ARL was to engage the claimant as a temporary worker and not an employee. The claimant was aware of that. He claims to have disregarded the contracts sent to him. I am not sure much turns the reiteration of terms other than it is suggestive of a renewal or extension of a contract but we have no evidence if that was in fact the case and the contract for the provision of a pipefitter was being renewed. Looking behind this, although the evidence is unsatisfactory and incomplete, I am satisfied that the reality was that there was one assignment and that it lasted from 2018 onwards. The job was as a Pipefitter on the construction squad. It was expected to be a long-term assignment and proved to be one. There was no break in the relationship. The claimant felt obligated to make himself available and the respondent

appeared to rely on that availability. They envisaged a long-term relationship promising, but not guaranteeing, future work. The natural inference from these facts was that the claimant agreed to work on a regular three week on three weeks off rota for pay on an open-ended basis. In these circumstances I am of the view that he satisfies the mutuality of obligation test.

55. That is not the end of the matter. The concept of control is still an essential part of the **Ready Mixed Concrete** test. Ms Drysdale argued that clause 20 which relates to the conduct of the assignment provides that control. I regret that I cannot agree. The Clause makes repeated reference to 'the Client' and their requirements and standards. Clause 20(d) for example refers to the 'Client' Code of Conduct'.

56. In no real sense could the claimant here be said to be under the control of ARL in carrying out his day to day duties. The work carried out was ultimately instructed by Chevron and carried on their behalf by PFML. The contractual relationship between these two companies dictated the work and the standards of work. Work was authorised through the issue of permits. There was no doubt a contract between Chevron and PFML in relation to the operation of the asset. The fact that the two foreman were also Temporary Workers engaged through the respondent only gives the illusion of some control by ARL. The truth of the matter is that there was no control over the claimant's work exercised by ARL who were not in any event contractually required to or competent to carry out that task and it is on this basis that the claim must fail.

Employment Judge	**JM Hendry**
Dated	**9 September 2021**
Date sent to parties	**9 September 2021**