EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MR M GROOM	AND	MARITIME AND COASTGUARD AGENCY

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 23RD / 24TH FEBRUARY 2022

EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE) **MEMBERS:**

APPEARANCES:-

FOR THE CLAIMANT:- **MR P KERFOOT (COUNSEL)**

FOR THE RESPONDENT:- **MR M BLITZ (COUNSEL)**

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

i) The claimant was not a worker of the respondent within the meaning of s13(1)(a) Employment Relations Act 1999.

ii) The claimant's claim of the unlawful refusal to permit him to be accompanied at a disciplinary meeting pursuant to sections 10 and/or 11 Employment Relations Act 1999 is not well founded and is dismissed.

Reasons

1. By this claim the claimant alleges that the respondent is in breach of sections 10 and 11 Employment Relations Act 1999 in the refusal to permit him to be accompanied by a trade union representative at a disciplinary hearing. In order to have the right to bring the claim the claimant must be a "worker" of the "employer". Section 13 (1)(a) defines worker in accordance with s230 (3) of the Employment Rights Act 1996. The respondent does not accept that the claimant is a worker within that definition, and the case has been listed for a preliminary hearing to determine his employment status. Whilst this litigation only specifically concerns the claimant, and only in the narrow circumstances of this claim, if CROs have the status of workers of the respondent there are ramifications for a large number of legal obligations and duties.

2. I have heard evidence from the claimant; and on behalf of the respondent from Mr Peter Mizen (Chief Coastguard) , and Ms Kerry Daly-Lees (Senior Coastal Operations Officer).

3. The function of the respondent is set out in the witness statement of Mr Mizen and is not challenged:

   "HM Coastguard is responsible for the initiation and coordination of civil maritime search and rescue within the UK search and rescue region. This includes the mobilisation, organisation, and tasking of adequate resources to respond to persons in distress at sea, or to persons at risk of injury or death on the cliffs or shoreline of the UK"

   HM Coastguard discharges this function, in the main, by alerting and tasking either declared or additional facilities.

   a. Declared facilities: those that declare a capability that is available for Search and Rescue. Declared facilities must declare their capability, maintain that capability, or notify of any changes to that capability should that capability not be available. For example: RNLI, Mountain Rescue, National Coastguard Watch Institute etc.

   b. Additional Facilities: facilities that may be available from time to time but meet no declared capability. For example: pleasure craft, commercial craft, yacht club safety boats etc.

Background/Summary

4. There is in reality very little dispute of fact between the parties; the central dispute being the interpretation of and the legal effect of the Volunteer Agreement and Code of Conduct.

5. One of the declared facilities is the Coastguard Rescue Service (CRS). It is made up of approximately 325 Coastguard Rescue Teams (CRTs). There are approximately 108 employed staff and some 3500 Coastguard Rescue Officers (CROs). All of the CROs are regarded by the respondent as volunteers and the issue in this case is whether that is an accurate description of the relationship. The claimant contends that they are not volunteers but workers within the meaning of s230(3). The claimant was a CRO from 5th December 1985, and a Station Officer (SO) from 2011, until his membership was terminated in June 2021.

6. The documentary evidence I have in relation to the recruitment and the obligations and rights of CROs are the current documents. I have no documentary evidence as to the process by which the claimant became a CRO. The evidence from the claimant is that whilst he joined as a volunteer, he first began to think that he was or may be a worker of the respondent from some point around 2004/2005 (the basis of which is set out in greater detail below), and that an analysis of the current documentary evidence leads to the conclusion that he was at least by the point of termination of his membership a "worker" and no longer a volunteer even if that was his original status; in that the documents demonstrate that there were legally binding contractual obligations and that, in essence, he had a contractual obligation to provide personal service to the respondent in return for remuneration, and that he therefore falls within the definition of a worker.

Documentation

7. A significant part of the claimant's claim is based on the proposition that the obligations contained in the documentation create a contractual relationship and so it is necessary to set them out in some detail.

8. The current process begins with the individual completing an enrolment application which describes it as an application to "volunteer". There is a Volunteer Handbook which repeatedly describes the members of the CRTs as volunteers and in the Introduction explicitly states that the relationship *".. is a voluntary two-way commitment where no contract of employment exists.*". The claimant does not accept that this is accurate and contends that in fact the relationship created is contractual.

9. One of the requirements is to follow that code of conduct on which the claimant places particular reliance so I will set it out in full:

   Failure to follow this Code of Conduct may result in termination of CRS membership.

   A Coastguard Rescue Officer MUST:

1) Always act within the law;

2) Act in line with CRS policies, procedures and processes and carry out all activities with due care and attention to all instructions, especially safe systems of work and health and safety advice.

3) Carry out all reasonable requests made by Coastguard management or CROs in a position of authority when responding to call outs or undertaking training or volunteer
led practice;

4) Maintain individual competence and set a good example to other CROs by:

a. Attending **all** necessary qualification training;
b. Attending at least 50% of official management led exercises;
c. Attending at least 50% of team (volunteer) led voluntary practice;
d. Maintain a reasonable level of incident attendance;
e. Maintain local knowledge through participation in a programme of local knowledge patrols.

(The metrics above are measured over a 12-month rolling period).

5) Maintain the required level of personal fitness to be able to respond physically to the demands of incidents, training, exercise and voluntary practice sessions, informing Coastguard management if there are any health concerns which may affect individual ability to undertake CRS activities;

6) Attend routine health checks, as determined by Coastguard management, and maintain the personal health and fitness standards required to meet the enrolment
criteria for CROs;

7) Report all accidents, injuries and near misses whilst undertaking Coastguard activities in accordance with the accident and near miss reporting policy;

8) Maintain a clean and smart appearance whilst undertaking Coastguard activities and conform to HMCG Uniform Policy by only wearing:
Clothing and insignia issued or approved by HMCG;
b) Personal Protective Equipment (PPE) to protect your health and safety as the role requires or Coastal management dictates;
c) Formal dress made available for ceremonial / official events, following HMCG

guidance for bearing medals, decorations or awards.

9) Respect, maintain and care for all Coastguard property, including specifically:

a) Coastguard vehicles, equipment and clothing must only be used for Coastguard activities;
b) Report any loss or damage to Coastguard property to Coastguard management.
c) Comply with the Acceptable Use policy for mobile phones, Station telephone landlines, and associated IT equipment etc.
d) Return all Coastguard property immediately on leaving the CRS.

10) Direct press enquiries and requests for interview to the duty MCA Press Officer via the on-call Duty Coastal Officer or relevant Coastguard Operations Centre (CGOC);

11) Be respectful, polite and behave professionally with all people at all times, and raise any matters of concern with the Station Officer (SO) or Coastguard management in a constructive and reasonable way;

12) Use social media responsibly in accordance with MCA Policies, and when membership of the CRS comes to an end, ALL administrator rights to the CRTs Facebook or other social media pages must be given up and passed on to another team member;

13) Embrace the use of technology as required to facilitate effective operations.

A Coastguard Rescue Officer MUST NOT:

14) Take part in any Coastguard activity that they have not been assessed as competent to carry out;

15) Undertake Coastguard duties when not fit enough to do so;

16) Undertake Coastguard duties if they have:

a) Consumed **<u>any</u>** amount of alcohol likely to impair their judgement or adversely affect the reputation of HMCG, i.e. smelling of alcohol, or;
b) Are under the influence of drugs or other substances.

17) Smoke or use e-cigarettes whilst in HMCG vehicles and properties or whilst in PPE or uniform in view of the public or other responders;

18) Contravene the Road Traffic Act in any vehicle whilst operating on behalf of HMCG,
with particular regard to driving rules and speed limits. They must not fit and / or use emergency warning devices and / or illuminating signage to personal vehicles for use on Coastguard duties; Criticise or complain about the MCA, HMCG, other Emergency Service (ES) providers or contractors (including individuals from those organisations) openly in
public, in any media including websites or social media networks;

20) Use the name of the MCA, HMCG or contractor or use Coastguard vehicles, equipment clothing or other property to gain personal advantage or commercial gain; 21) Bring the Service into disrepute through poor or negligent personal conduct or behaviour either on or off duty;

22) Make available any forms of official information, belonging to the MCA, HMCG or its partner and stakeholder organisations to external bodies without the permission of Coastguard Headquarters;

23) Damage or misuse Coastguard property, or use private unauthorised or out of date quarantined protective clothing or equipment;
24) Modify, wilfully damage or inappropriately mark equipment;

25) Accept gifts of equipment or money;

26) Use the Rescue Station, Coastguard vehicles or other Coastguard property for other activities (e.g. outside group visits or training, social events etc.) without the permission of Coastguard management.

Training /Attendance

10. As is set out at 4 a) -d) of the Code of Conduct above there are requirements of attendance including at training events. 4a) includes some 80 hours training in the first year. Thereafter there are a number of specific training courses each of which is for approximately 16 hours.4 b) relates to some 26 hours per year management training . 4 c) varies enormously according to the area and team. Mr Mizen gave evidence that he is aware that Port Talbot conducts volunteer training twice weekly whereas other more remote and less busy stations only conduct volunteer training every few months. There is a dispute about 4d) and the meaning of reasonable levels of attendance at incidents. Mr Mizen's evidence is that there is no national standard, whereas the claimant insists that there is a requirement of 50 / 75% attendance. Mr Mizen's evidence was that he chairs a consultative committee which includes some 25 CRO representatives and the percentage set in the code of conduct are agreed as part of the consultation. Indeed he stated that he had not wished to give specific percentages in 4b) or c) but those were added on the basis the CROs themselves

thought them reasonable. Despite this this evidence, which I accept, Mr Mizen was challenged on the basis that he was wrong to assert there are no national standards. Ms Daly-Lees evidence was that she viewed attendance of 40% or lower as requiring her to have a conversation with a CRO about attendance. Both have given evidence which the claimant did not dispute that a reasonable level of attendance was necessary to maintain skills and the perception that all members of the team were pulling their weight.

11. As will be apparent there is no compulsory attendance at any individual training event or incident (save for qualification training). Mr Mizen's evidence was that each incident is controlled from the Operations Room. Once a report of an incident is received it will decide how it should best be dealt with which includes alerting the police, ambulance, fire or mountain rescue)services In the event that they allocate it to a CRT they will notify each member of that team by their preferred method (e.g. email or text to mobile phone etc). Depending on the incident they may not require the whole team. If they only require two members of the team, for example, after the first two have replied any others who reply can be stood down. If there is insufficient response they can notify another neighbouring CRT and/or one of the other emergency services. There is no obligation on any individual CRO to respond to any individual notification and CRO's have the capacity to suspend being notified by suspending notification the A and T system. Mr Mizen accepted that if the operating room wished to it could access the system to discover which members of a team had suspended notification but in practice hey would never do so, but simply seek alternative assistance if insufficient CROs replied to a notification.

Remuneration

12. There is no automatic remuneration for attendance at any event, although CROs are entitled to claim expenses and a fixed sum for attendance at some activities. That fixed sum is paid on a standardised hourly rate, which matches the national minimum wage and the purpose of which is "..to cover minor costs caused by your volunteering, and to compensate for any disruption to your personal life and employment and for unsocial hours call outs." The activities for which remuneration is payable are set out in the Volunteer Handbook and fall into seven categories, broadly operational tasks; attendance at events delivered by or authorised by Area Management; inspections; attendance at PR or community events and miscellaneous activities if subject to prior approval from Area Management. No other voluntary activity attracts the remuneration; and there are detailed rules for the amounts that can be claimed.

13. The evidence from the respondent is that approximately one third of CROs never make a claim for remuneration or expenses. The reasons for this vary, some taking the view that payment for the services is inconsistent with their voluntary public service ethos; others that that the tax implications make it unduly onerous or simply not worthwhile to do so.

2004/2005 National Conferences

14. The claimant relies on comments made during the 2004 and 2005 National Conferences. In the 2004 conference the view was expressed that Auxiliary Coastguards (now CROs) were workers not employees and an Update paper specifically expressed the view that CROs were workers for the purposes of a number of pieces of legislation including the Working Time Regulations 1998 (under which the definition of a worker is identical to that contained within s230 ERA1996). A similar view was expressed during the 2005 conference. The claimant relies on these as correctly identifying status of CROs.

15. Mr Mizen's evidence is that these expressions of opinion were not ultimately accepted or acted upon by the respondent which continued to take the view that CROs were volunteers. This must necessarily be correct as the respondent did not from 2004/5 take the view that volunteers were workers.

Edwards v MCA (3100413/2010)

16. The respondent relies (at least as persuasive authority) on the fact that this issue has already been determined by the Employment Tribunal. In Edwards v MCA (3100413/2010) EJ Coles (sitting on 1st November 2010). He determined that the claimant was neither an employee nor a worker of the respondent and that the tribunal therefore had no jurisdiction to determine complaints of unfair dismissal or whistleblowing detriment. Particular reliance (para 13) was placed by the claimant on the fact that the existence of a call out rota in reality created an obligation to attend, as demonstrated by the fact that he could be disciplined and have his membership terminated for failure to attend. This, he contended created sufficient mutuality of obligation to render him an employee or at least a worker. EJ Coles concluded that the claimant was genuinely a volunteer (para 24), and the fact that he could have his membership terminated did not alter the fact that there was no obligation to attend a call out and therefore, no mutuality of obligation (para 23).

HMRC National Minimum Wage Investigation

17. Section 1 of the National Minimum Wage Act 1998 provides that all "workers" are entitled to receive the national minimum wage. "Worker" is defined by s54(3) in identical terms to that of the Employment Rights Act 1996 s230. Thus CROs would only be entitled to the NMW if they were "workers"' as defined by an identical test to that which am considering in this case. Accordingly, whilst I am not bound to accept HMRC's conclusion the question that was being raised was identical to that which arises in this case. As is set out below both parties invite me to place significant weight on this evidence; the claimant contends that the initial deeming of CROs to be "workers" is of considerable significance, whilst the respondent relies on the fact that after investigation they were deemed not to be.

18. On 2nd August 2016 Ms Naomi Shephard of HMRC interviewed Ms Claire Hughes representing the respondent. During the interview Ms Shephard stated that she deemed the CROs to be workers "…due to the fact that CROs are paid an hourly rate as well as expenses, must undertake specialised training and perform specific duties and that the MCA could not perform one of its statutory duties without CROs." This was confirmed in a letter of 15th August 2016. The respondent did not agree with this classification and contended that they were volunteers. It set out its position in detail in a letter dated 1st September 2016 which effectively and unsurprisingly foreshadows the issues in this case. Following a series of interviews with sample CROs, by a letter dated 4th May 2018 HMRC determined that CROs were not workers for the purposes of the legislation.

19. I do not have any of the interviews with the volunteers or any documentary evidence setting out why HMRC concluded that the CROs were not in fact workers for the purposes of the NMW legislation, and what factors had led to that conclusion.

Claimant

20. As set out above the basis of this the claim and the motivation for bringing it is that the claimants membership was terminated following a disciplinary process. The rights and wrongs of the underlying allegations are not relevant for my purposes, but the claimant believes that he has been extremely harshly and unfairly treated and that had he been allowed a trade union representative this would, or at least may not have occurred. A declaration as to worker status and the rights that that would bring would go some way to prevent other CROs being unfairly treated in future.

Submissions - Claimant

21. The starting point of the claimant's submissions is the case of *Uber BV and others v Aslam and others [2021] UKSC 5 (Uber)*. He contends that this case is essentially on all fours with Uber and that just as the drivers were held to be "workers" in that case that by a parity of reasoning he is necessarily a "worker" of the respondent. He contends in summary that :-

a) The question of status is one of statutory not contractual or documentary interpretation and that the parties own description of the relationship is not determinative of, or the correct starting point for determining the issue.

b) The expectations set out in the Code of Conduct create an "implied contract" whereby the claimant would personally assist in performing search and rescue services and ancillary activities necessary to perform those services for which he was entitled to remuneration and expenses.

c) Failure to comply with the requirements of the Code of Conduct and/or expectations as to attendance at search and rescue and/or ancillary activities could result in disciplinary action and/or his membership being terminated.

d) The agreement required him to carry out those activities personally and he had no right to substitute another CRO, or necessarily any untrained volunteer in any of those activities.

e) Whilst there may be no mutuality of obligation in that the respondent had no obligation to contact him to attend search and rescue services and he had no obligation to attend if contacted; mutuality of obligation is relevant to but not decisive of worker status (Windle v SoS for Justice [2016] EWCA Civ 459).

f) The earlier conclusions as to worker status of the MCA itself, the Employment Tribunal, and HMRC were all taken before the Uber decision and are inconsistent with it; and that of necessity this tribunal is bound to apply the approach to the issue as set out in Uber.

22. In addition, in his oral submissions Mr Kerfoot set out a relatively detailed analysis of Uber. In essence his submission is that the obligations of a CRO derived mainly from the Code of Conduct are to all intents and purposes indistinguishable from the obligations of a Uber driver and that the same conclusions should be drawn as to the nature of the contractual relationship and the claimant's status. It is not necessary to set them out in detail but in summary he contended that:

a) The process of and requirements for becoming an Uber driver were very specific and essentially indistinguishable from, or if anything less onerous than, the process and requirements for becoming a CRO (Uber para 14);

b) The requirements of availability are also indistinguishable in that neither an Uber driver nor a CRO has any obligation to be available at any particular time (Uber para 16 and 90);

c) That there are essentially identical requirements for professional standards of behaviour (Uber para 17)

d) That remuneration is fixed by the MCA (Uber para 94)

e) That the terms of the contract (Volunteer agreement) are dictated by the MCA (Uber para 95)

f) That when attending a call out the CRO is subject to a very high degree of control by the MCA. (Uber para 96- 101)

23. Looked at overall he contends that this tribunal should reach the same conclusions as that in Uber. Whilst there may be no overarching or umbrella contract; that whilst

attending activities for and on behalf of the respondent that the claimant was a worker of it, for precisely the same reasons that the drivers were held to be workers of Uber. This conclusion is consistent with and supported by the analysis in *James v Redcats (Brands Ltd [2007] ICR 1006.*

Submissions - Respondent

24. The respondent contends that there are a number of authorities which recognise the status of volunteer. In determining whether an individual is a worker or volunteer it relies in particular on the decision of the EAT in *South East Sheffield Citizens Advice Bureau v Grayson [2004] IRLR 35* (at para 21)

> ‘‘*We consider that the crucial question which was before the tribunal was not whether any benefits flowed from the Bureau to the volunteer in consideration of any work actually done by the volunteer for the Bureau, but whether the Volunteer Agreement imposed a contractual obligation upon the Bureau to provide work for the volunteer to do and upon the volunteer personally to do for the Bureau any work so provided, being an obligation such that, were the volunteer to give notice immediately terminating his relationship with the Bureau, the latter would have a remedy for breach of contract against him. We cannot accept that the Volunteer Agreement imposed any such obligation. Like many similar charitable organisations, similarly dependent on the services of volunteers, the Bureau provides training for its volunteers and expects of them in return a commitment to work for it, but the work expected of them is expressed to be voluntary, it is in fact unpaid and all that the Volunteer Agreement purports to do is to set out the Bureau's expectations of its volunteers. In our view, it is open to such a volunteer at any point, either with or without notice, to withdraw his or her services from the Bureau, in which event we consider that the Bureau would have no contractual remedy against him. We find that it follows that the advisers and other volunteers were not employed by the Bureau within the meaning of the definition in section 68 of the 1995 Act”* (my underlining)

25. It submits that the reliance placed by the claimant on the Uber case and the particular factors relied on as set out above is essentially misconceived. In the Uber case the first question was with whom the driver was in a contractual relationship, Uber or the customer. Uber’s argument, which was ultimately rejected, being that it was simply a booking agent linking the two contracting parties. The second question was, if as was held to be the case, the drivers were in a contractual relationship with Uber, whether it was a relationship in which they were workers, which they were ultimately held to be. In support of this proposition it is not necessary to do more than set out an extract from the headnote:

> **“Held**, *dismissing the appeal, (1) that the critical issue was whether the claimants were to be regarded as working under contracts with the London company whereby they undertook to perform services for that company, or whether they were to be regarded as performing services solely for or under contracts*

made with the passengers through the agency of the London company ([42]); that, as there was no written contract between the claimant drivers and the London company, their legal relationship had to be inferred from the parties' conduct, and there appeared to be no factual basis for the companies' contention that the London company acted as a booking agent for the drivers ([49]); that the correct inference must, therefore, be that, by accepting a booking, the London company contracted as principal with the passenger and engaged a driver, as employee or subcontractor, to carry out the booking ([56]); that, further, determining whether an individual was a "worker" within the meaning of s.230(3)(b) of the Employment Rights Act 1996, s.54(3)(b) of the National Minimum Wage Act 1998 and reg.2(1) of the Working Time Regulations 1998 was a matter of statutory interpretation, not contractual interpretation, since the purpose of those provisions was to protect vulnerable workers, who were in a position of subordination and dependency in relation to a person or an organisation which exercised control over their work ([69], [71], [75], [76]); that, on the facts found by the employment tribunal, it could be seen that the transportation service performed by drivers and offered to passengers through the Uber app was very tightly defined and controlled and that the drivers had little or no ability to improve their economic position through professional or entrepreneurial skill; and that the tribunal had, therefore, been entitled to find that the claimant were "workers", who worked for the London company, for the purposes of the relevant provisions ([101], [119]).

26. The respondent contends that its case is that, as the headnote sets out there was no dispute that the claimants were in a contractual relationship with either the customer or Uber, the first question being with whom. In this case the basic proposition which underlies it's submissions is that here is no contractual relationship at all and that this is not a case that can be determined by reference to Uber.

27. Although not binding on me it also relies on the fact that the earlier employment tribunal determining the same point held that CROs were not workers; and that HMRC reached the same conclusion after an investigation lasting some eighteen months during which it altered its original view deeming them to be workers.

28. The primary factual contentions upon which the respondent relies are that :-

a) The agreement is expressly defined as a voluntary agreement. This reflects the historical reality and the genuine understanding of the respondent and is not a sham or device in that at least for the first two decades of his service the claimant also understood himself to be a volunteer;

b) The claim is being brought by the claimant alone and not in any representative capacity. None of the other 3500 CROs has sought to challenge the fact that the agreement is genuinely a voluntary agreement, and none has been called by the

claimant to support his view, indeed here is no evidence before this tribunal that anyone other than the claimant regards it as inaccurate;

c) There is no obligation on any CRO to attend any training event or incident save for compulsory qualification training;

d) There is no obligation on any CRO to respond to a notification and they are entirely free to ignore any that is inconvenient or which they are unable to attend for any reason; or to attend any training event or incident save for compulsory training;

e) There is no obligation to inform the respondent that any individual CRO is unavailable at any given time;

f) There is no obligation for team members to liaise to ensure that a reasonable proportion are likely to be available;

g) The expectation to attend some 50% of voluntary training and a reasonable proportion of incidents is entirely consistent with the CROs being volunteers in that they need to maintain their skills in order to be able to assist in the activity for which they have volunteered;

h) The remuneration bears no relation, and is not intended to bear any relation to any actual loss of income or any other expense sustained by a CRO; and approximately one third of CROs do not claim any expenses, and at least for them all activities are entirely unremunerated.

i) That in essence the case has been reverse engineered. The claimant believes that he was unfairly treated and if he had worker status that unfairness may not have occurred; and he has worked backwards from that starting point to argue for worker status.

Conclusions

29. The crux of the dispute is that the claimant contends that a contract can be implied by the correspondence between the factual features of this case and those in Uber; whereas the respondent contends that in Uber the fact of the existence of a contractual relationship was the starting point and the factual matrix was used to determine the questions of with whom the claimants were in a contractual relationship and their status. This dispute appears to me to involve two separate questions. The first is whether it is necessary to imply a contractual relationship at all; and the second if there is a contractual relationship whether it is one of worker/employer.

30. In my judgement the respondent is clearly correct to assert that Uber itself is not authority for the proposition that a contractual relationship can itself be implied from the factual issues as that point was not in dispute. Similarly neither in Uber nor any of the other authorities relied on by the claimant was there any contention that the activity was not located in the field of work. For the reasons given above it is not possible in my judgement to determine the issue by reference to Uber without considering the prior question of whether any contractual relationship in fact exists.

31. In my judgement there are a number of factors pointing to the fact there is not:-

a) Firstly although not determinative the agreement is described as a voluntary agreement and there is no suggestion that this anything other than the genuine understanding of the respondent; equally on the claimant's evidence, he too took the same view, at least from the commencement of the relationship until 2004/5;

b) There is no automatic remuneration for any activity and many CROs never claim ; and there are a number of activities for which remuneration is not payable at all, participation in which is only explicable in the context of volunteering;

c) The degree of control does not appear to me to be particularly significant in this case. The role of a CRO is safety critical and the same degree of control will necessarily be exercisable whether the CRO is a volunteer or a worker and does not, in this case help distinguish between the two.

d) Albeit that I do not have any of the reasoning the fact that the HMRC conducted an 18 month investigation and concluded that CROs were not workers is clearly significant.

32. Whilst none of those factors are individually decisive taken together they point in my judgement more naturally to the conclusion that this is a genuinely voluntary relationship.

33. As set out above the respondent relies on a number of authorities and in particular on the principle in "Grayson" referred above. The contention in this case is that there is no overarching or umbrella contract but that during the time a CRO is undertaking CRO activities for the respondent he is a worker. However it appears to me that the reasoning in Grayson does apply in this case. Whilst a sense of public service might compel a CRO to continue to assist in an activity, particularly one in which there a risk to the health and safety of members of the public; there is no contractual right on the part of the respondent to require them to do so. I bear in mind, and as is relied on by the claimant, the respondent could in those circumstances ultimately terminate the CROs membership, which he contends is the equivalent of a contractual right, but as a matter of fact there is no contractual right to take any action at all.

34. Ultimately there must be some method of distinguishing a relationship which is genuinely voluntary and non-contractual from one which is contractual and located in

the field of work. Firstly in my view if both parties in starting the relationship genuinely believe it to be voluntary then that is powerful evidence that that is precisely what it is. Secondly there is no evidence before me that the fundamental nature of the relationship changed at any point. If it did not, how did the relationship change from a genuinely voluntary one to one of employee/worker. As set out the claimant's explanation is the decision of the Supreme Court in Uber has the effect of transforming the voluntary relationship to one located in the field of work and of employee/worker. For the reasons set out above I accept the respondent's submission that this is to place a weight on the decision it cannot bear. I am not able to identify anything in Uber which would have the effect of transforming the nature of an existing voluntary agreement.

35. It follows that looked at overall I am satisfied that the agreement between the parties is a genuinely voluntary one, and I do not find that the claimant was a worker within the meaning of the Employment Relations Act 1999 and it follows that his claim must be dismissed.

Employment Judge Cadney
Date: 30 March 2022

Judgment & reasons sent to parties: 12 April 2022

FOR THE TRIBUNAL OFFICE