EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
MR T AGBETU	**v**	**GREATER LONDON AUTHORITY**

Heard at: London South ET (by video)

On: 2 December 2022

Before: Employment Judge P Klimov (sitting alone)

Representation:

For the Claimant: in person

For the Respondent: Ms J Shepherd, counsel

JUDGMENT having been sent to the parties on 8 December 2022 and written reasons having been requested by the Claimant on 8 December 2022, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background and Issues

1. By a claim form presented on 19 October 2021 the claimant brought claims of unfair dismissal and race discrimination. The respondent entered a response on 15 November 2021 denying the claims and contesting the Tribunal's jurisdiction on the grounds that the claimant was not an employee of the respondent within the meaning of s.230 ERA and was not in the respondent's employment within the meaning of s.83 EqA. The respondent asked the Tribunal to strike out the claimant's claims or in the alternative, order that the

claimant pays a deposit as a condition to being allowed to continue with his claims.

2. The respondent also contended that the claims had been presented out of time and the Tribunal did not have jurisdiction to consider them for that reason too.

3. The Tribunal listed an open preliminary hearing to consider:
   (i) Whether the claimant was an employee or worker of the respondent within the definition of the Employment Rights Act 1996 ("**ERA**"), or an employee within the definition of the Equality Act 2010 ("**EqA**").
   (ii) Whether the claimant's claims are brought within the required time limits and, if not, whether it was reasonably practicable for the claim to be brought in time or whether it is just and equitable to extend time.
   (iii) The issues to be determined at the final hearing, if appropriate.

4. The claimant appeared in person and the respondent was represented by Ms Shepherd. Both parties prepared written submissions.

Evidence

5. There were three witnesses: the claimant, for the respondent: Ms D McGrath (Communities Engagement Officer) and Ms S Manson (Assistant Director of Culture and Creative Industries). All gave sworn evidence and were cross-examined.

6. The Tribunal was referred to various documents in the bundle of documents of 220 pages the parties introduced in evidence. The claimant's witness statement had addition documents appended to it, which I accepted in evidence.

7. The following authorities were referred to by the parties:

   (1) Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 2 QB 497, QBD
   (2) Nethermere (St Neots) Ltd v Gardiner and anor 1984 ICR 612, CA
   (3) Carmichael and anor v National Power plc 1999 ICR 1226, HL
   (4) Express and Echo Publications Ltd v Tanton 1999 ICR 693, CA
   (5) Hewlett Packard Ltd v O'Murphy 2002 IRLR 4, EAT
   (6) South East Sheffield Citizens Advice Bureau v Grayson 2004 ICR 1138
   (7) Melhuish v Redbridge Citizens Advice Bureau 2005 IRLR 419, EAT
   (8) Autoclenz Ltd v Belcher and ors 2011 ICR 1157, SC

(9) X v Mid Sussex Citizens Advice Bureau and anor 2013 ICR 249, SC

(10) Revenue and Customs Commissioners v Atholl House Productions Ltd 2022 ICR 1059, CA

(11) Kickabout Productions Ltd v Revenue and Customs Commissioners 2022 EWCA Civ 502, CA

(12) Uber BV v Aslam, [2021] UKSC 5, [2021] ICR 657

The Facts

8. The claimant is a social right activist, community educator and filmmaker, who founded in 2000 the Pan-African group Ligali.

9. The respondent is a strategic authority established under the Greater London Authority Act 1999. Its purpose is to support the work of the elected Mayor of London and the Assembly, consisting of 25 elected members.

10. In its work, the respondent seeks to engage with external partners and community leaders to ensure that it is inclusive and reflects the aims of the communities it serves. The types of engagement vary from ad hoc informal discussions with individual stakeholders through to creating a more formalised steering group to provide focused input on a particular project or piece of work.

11. In 2018 the respondent's Community Engagement Team has set up an informal advisory community group with the aim to provide input on the Deputy Mayor of London's annual event on UNESCO's International Day for the remembrance of the Slave Trade and its Abolition ("**the Event**"). The group was called the Community Organising Group ("**the COG**").

12. The COG is not organised in any legal form, it has no formal structure or governing documents. It has no executive powers of any sort. It exists as an informal advisory group which meets from time to time to discuss matters pertinent to the preparation for the Event. The Event takes place in August and the COG holds on average 5 meetings between April/May and August in the run up to the Event.

13. Members of the COG are not paid for their participation. They bear all expenses for attending the COG's meetings. The participation is voluntary. Members are under no obligation to attend the meetings. There are no requirement of a minimum level of time and effort members must dedicate to the COG's activities. Their participation is largely driven by the member's common interest in the Event and the aims it serves, and the opportunity to meet and engage with people who share those interests.

14. On 29 March 2019, Ms Winch, a Young Futures Engagement Officer at Hackney Council, was invited by Ms McGrath to join the COG. Ms Winch accepted the invitation and also suggested to Ms McGrath to invite the claimant to the group, introducing the claimant via an email.

15. On 7 April 2019, the claimant emailed Ms McGrath expressing his willingness to join the COG. Ms Grath responded by thanking the claimant and welcoming him to the group.

16. The claimant participated in the COG's meetings in the preparation of the 2019 and 2020 Events. This involved attending the meetings, reviewing and commenting on documents, such as the Event's agenda, and attending the Event itself.

17. In November 2020, the respondent established the Commission for Diversity in the Public Realm ("**the Commission**"). The aim of the Commission is to increase diversity across London's public realm and ensure that the landmarks across the city reflect its diversity and achievements, focusing on increasing representation among Black, Asian and minority ethnic communities, women, the LGBTQ+ community and disability groups.

18. The Commission is co-chaired by the two Deputy Mayors. The co-chairs are the political leads for the Commission, on behalf of the Mayor, and each Deputy Mayor is supported by a team of officers of the respondent, who work together to deliver the project.

19. The Commission's governance terms provide for having up to 15 members. Members are appointed through an open application and selection process. The appointment is for a term of two years. As part of being appointed members are asked to agree to Terms of Reference ("**ToR**") which provide an overview of the aims of the Commission and contain a code of conduct detailing ethical conduct expectations which members are expected to adhere to. Members are not formally appointed until they sign and return the appointment letter which incorporates the ToR. The appointment is subject to the respondent receiving satisfactory references.

20. The appointment letter confirms the appointment as a member of the Commission, contains the start date of the appointment, and states that the appointment will cease at the end of the term, but may be terminated at any time. The letter asks the appointee to "*formally confirm [their] acceptance of the role and [their] agreement to adhere to the Terms and Code of Conduct*", by signing, dating and returning a copy of the letter.

21. The ToR include the following terms:

"*General Principles*

2.1 There are a number of general principles, which the Commission expects Members to adopt in their conduct. These are as follows:

i) they should act solely in the public interest. They should never use their position as members of the Commission, to gain for themselves, their family or their friends any financial benefits, preferential treatment or other advantage, or to confer such benefits, treatment or advantage improperly on others;
ii) they should not put themselves in a position where their integrity is called into question by any financial or other obligation. As well as avoiding actual impropriety, they should avoid any appearance of it;
iii) appointments should be on merit;
iv) contracts must be awarded in accordance with the principle of Best Value;
v) being accountable to the Mayor, the London Assembly and wider community of London for their actions and their part in reaching decisions, they must submit themselves to whatever scrutiny is appropriate for their office.
vi) they must play their part in ensuring that the Commission uses its resources prudently and in accordance with the law;
vii) whilst they may be properly influenced by the views of others; including any political Commission or interest Commission to which they belong or which they represent and must have regard to advice, it is their responsibility to decide for themselves what view to take, and how to vote, on any question which they have to decide;
viii) they must uphold the law, and act on all occasions in accordance with the public trust placed in them;
ix) they should respect the role of the Mayor, members of the London Assembly, other Members and officers and employees of the GLA, and treat them in a way that engenders mutual respect at all times; and
x) they should promote and support these principles by leadership and example, always acting in such a way that preserves public confidence in the Commission."

22. The ToR also state that members are required to declare any financial and non financial interest held by them or their family members that may be affected by programmes of the Commission, be open about their actions and their decisions, maintain confidentiality, avoid making public comments or commitments on behalf of the Commission.

23. The appointed members are not paid for their participation in the work of the Commission. However, they are entitled to be reimbursed for travel and other expenses reasonably incurred in performing their role.

24. In performing their role, a member of the Commission is required to attend meetings of the Commission, which initially were planned to be monthly, later changing to quarterly. Members may be asked to lead on particular projects, contribute to the Commission's report of findings and recommendations to the Mayor. They are asked to become "*champions of Diversity in the Public Realm in their own sectors and to advance the mission of the Commission via their networks"*.

25. Subject to their availability and particular experience, members may be invited to give public speeches, participate in roundtables and panel discussions, write or contribute to press articles and the respondent's publications, give media interviews, provide quotes for media activity.

26. The application pack contains details of the Commission and the member's role and describes their duties as follows:

> **"*Duties:***
> *• Attend and actively participate in Commission meetings, advising on the emerging issues pertinent to the brief;*
> *• Steer the delivery of the Mayor's Commission objectives by providing expertise and guidance;*
> *• Listen and respond to a wide range of positions across London's communities*
> *• Advocate for the importance of culture in growing the capital's global reputation as a creative hub;*
> *• Advocate for importance of diversity of representation in public realm;*
> *• Catalyse new strategic partnerships to deliver the Mayor's culture programme; and*
> *• Work with GLA officers to convene stakeholder networks drawing in wider expertise to inform the development of the work of the Commission*."

27. If a member cannot attend a meeting, they cannot send a delegate in their place.

28. On 27 January 2021, the claimant was invited to become a member of the Commission. The invitation was sent by an email, which read (***my emphasis***):

> "*[…] Following your interview to be a member of the Commission for Diversity in the Public Realm, we are delighted to inform you that you have been selected as a member of the Commission.* ***Please note this is a conditional offer and is subject to the receipt of satisfactory references, before the formal appointment letter and terms of reference can be issued by the Mayor****.*
>
> *Our pre-appointment checks require two satisfactory references which relate to current or recent appointments or employment. Please can you confirm the names, email address and name of organisation for two referees who are willing to provide a reference. At least one referee must be a current or previous line manager or client, we're unable to accept references from colleagues. We will not contact your referees without your consent.*
>
> *To confirm you would like to accept this offer, please can you email* [xxxxxxxxx]@london.gov.uk*. Please could you also confirm the email address you would like to use for all future correspondence.*
>
> *Recruitment for the Commission attracted a high number of applications and we are in the process of contacting people to advise them on the outcome of their interview. Therefore, we ask that you please not to share news* ***of this offer*** *for the time being. We are planning a formal Mayoral announcement of all Commission members, which is planned for early February. […]*"

29. On the same day the claimant replied accepting the invitation and giving details of his two referees.

30. On 9 February 2021, the respondent publicly announced the 15 selected members, including the claimant.

31. The announcement of the claimant's appointment was picked up by the media and politicians, some of whom questioned the appropriateness of the claimant's appointment and the robustness of the respondent's vetting process. That was because of the claimant's prior public comments on various topics. The media coverage included an allegation in *The Jewish News* that the claimant had made antisemitic remarks in the past.

32. The Commission met for the first time on 23 February 2021 between 11am and 1pm. The claimant was in attendance. It was an introductory meeting. The focus of the meeting was to "*outline the vision for the Commission and hear about public engagement so far*". The vetting process was still ongoing, and prior to the meeting the claimant had not received a formal appointment letter or the ToR.

33. On 23 February 2021 at 11:21pm, Dr Debbie Weekes-Bernard, the Deputy Mayor for Communities & Social Justice ("**DWB**") texted the claimant asking for an urgent Zoom call the following morning because *The Jewish News* story had been escalating.

34. On 24 February 2021, starting at 8am, there were several conversations between the claimant and DWB and Mr Justine Simons OBE, the Deputy Mayor for Culture and the Creative Industries, concerning the claimant's position in light of the allegations appearing in the press. The claimant asked them to suspend him from the Commission and investigate the allegations. They refused and pressed him to step down from the Commission to prevent the allegations traumatising the staff at City Hall, distracting the Commission from its programme of work, and negatively impacting the 2021 Mayoral electoral campaign.

35. It appears the respondent's initial plan was to suspend the claimant pending an investigation into the allegations. Late in the evening on 23 February 2021, the respondent prepared a press statement and talking points confirming that decision. However, for some reason that decision had been changed before the conversation with the claimant the following morning, and the respondent did not agree to the claimant's request to suspend him and investigate the allegations.

36. The claimant offered to provide the respondent with a statement that he had not intended to cause harm to any community and that he was not a racist, anti-Semite or holocaust denier as was being alleged. The respondent refused and said that they would be publishing a press statement of their own.

37. On 24 February 2021, the claimant stepped back from the Commission. In his Facebook post he announced his decision as follows: "*…. I voluntarily decided to step back from the post before being asked, to help reduce the*

attacks on the important work of the commission, but I have no intention of letting such outrageous lies stand against me (will share some contextual info soon)….".

38. The respondent sent to *The Jewish News* a statement on behalf of the Mayor of London saying: "*Toyin Agbetu has today resigned from the Commission for Diversity in the Public Realm and the Mayor believes this is the right course of action*". A further press release was issued by the Mayor on 17 March 2021 stating: "*I have a zero-tolerance policy towards racism and prejudice in any form, and all allegations of this nature are taken extremely seriously. Toyin Agbetu has resigned from the Commission*."

39. On 9 March 2021, the respondent contacted the claimant asking him to keep a low profile at the COG to prevent further media attention. The respondent started to exclude the claimant from the COG's activities. For example, he was not invited to the COG's meeting on 21 April 2021. He was not included on a distribution list of respondent's emails related to the COG work of 5 May, 12 May, 13 May, 8 June and 2 July 2021. However, the claimant remained in contact with other members of the COG, who copied him on their responses to the respondent's emails about the Event.

40. On 2 July 2021, the claimant emailed the respondent asking, *inter alia*, if he had been unilaterally removed from the COG and if so why. He requested to be included in all future correspondence related to the work of the group.

41. On 7 July 2021, the claimant spoke with DWB. DWB asked the claimant to step down from the COG. The claimant refused.

42. On 8 July 2021, DWB emailed the claimant referring to their earlier conversation and confirming that the respondent wanted the claimant to step back from participating in the COG "…*following the allegations of anti-Semitism that were brought forward earlier this year. The Mayor has a zero-tolerance policy towards racism and prejudice in any form, and all allegations of that nature are taken extremely seriously*".

43. On 9 July 2021, the claimant replied turning down the invitation to step down from the COG because the claimant considered the respondent's motivation for seeking to end his involvement in the COG was irrational and unfair in the circumstances when the respondent had not done any investigation into the allegations against the claimant. The claimant asked the respondent to resolve the matter in a rational manner and pending the resolution to ensure that he remained included in all emails related to the Event.

44. On 12 July 2021, DWB responded by saying that if the claimant refused to stand down voluntarily, she would have to formally remove him from the group. In that email DWB also said that the respondent's standard code of

conduct required members of the COG to "*conduct themselves in a manner which lends itself to building a respectful and inclusive culture in our city and helps to celebrate all Londoners regardless of age, ethnicity, disability, gender, sexual orientation, religious beliefs or socio economic status*".

45. On 15 July 2021, the claimant sent to the respondent a pre-action letter for his claim for judicial review.

46. On 28 February 2022, the High Court refused the claimant's application for judicial review.

The Law

47. Section 230(1) ERA defines "employee" as "*an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment*".

48. Section 230(2) ERA provides that a *contract of employment* means '*a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing*'.

49. Section 230(3) ERA defines "worker". It reads: "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* (the so-called "limb (B) worker")*;*

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

50. The effect of these definitions is that employment law distinguishes between three types of individuals:
   i. employees - those employed under a contract of employment;
   ii. self-employed - people who are in business on their own account and provide their services to clients and customers as part of their profession or business undertaking; and
   iii. an intermediate category – "Limb B workers", who are not employees, but also do not provide their personal services as part of their profession or business undertaking, but rather as a profession or business undertaking carried out by someone else, who retained them to provide such services.

"Worker"

51. The concept of the worker is the statutory concept. It is comprehensively defined in the legislation. Lady Hale in *Bates van Winkelhof v Clyde & Co LLP and anor (Public Concern at Work intervening)* 2014 ICR 730, SC said: '*there can be no substitute for applying the words of the statute to the facts of the individual case*'. She, however, acknowledged that "*there was not 'a single key to unlock the words of the statute in every case*'.

52. Breaking down the statutory definition into its constituent elements, the following factors are necessary for an individual to fall within the definition of "worker":
    a. there must be a contract, whether express or implied, and, if express, whether written or oral,
    b. that contract must provide for the individual to carry out personal services, and
    c. those services must be for the benefit of another party to the contract who must not be a client or customer of the individual's profession or business undertaking.

53. EqA S83 (2) states
    "(2) "Employment" means—
    (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;"

54. The case law indicates that the scope of the term 'employee' in the EqA aligns with that of the term 'worker' under S.230(3) ERA — see *Windle and anor v Secretary of State for Justice* 2016 ICR 721, CA, and *Pimlico Plumbers Ltd and anor v Smith* 2018 ICR 1511, SC.

"*Employee*"

55. Over the years several legal tests have developed to identify relationship between parties, which should be regarded in law as being under a contract of employment, and how these should be distinguished from those falling outside that category. In making such determination a tribunal must consider all relevant factors. The irreducible minimum for employment relationship to exist requires control, mutuality of obligation and personal performance, but other relevant factors also need to be considered.

56. In *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* 1968 1 All ER 433, QBD Mr Justice MacKenna stated:

    "*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."

57. The continuing relevance of this test was confirmed by the Supreme Court in *Autoclenz v Belcher and ors* 2011 ICR 1157, SC.

58. The issues of mutuality of obligation and personal performance are common for the purposes of determining whether the claimant was a "worker" and, if so, whether he was an employee.

59. "*The concept of mutuality of obligation goes principally to the issue of whether there is a relevant agreement, or agreements. There must be mutuality of an obligation for there to be a contract at all*" (per HHJ James Tayler in *Sejpal v Rodericks Dental Ltd* [2022] I.C.R. 1339 at [23]).

Volunteers

60. In *South East Sheffield Citizens Advice Bureau v Grayson* [2004] ICR 1138 the EAT held that in order to establish that a volunteer worker was in fact an employee under a contract of service or a contract personally to do work, it was necessary to identify an arrangement under which, in exchange for valuable consideration, the volunteer was contractually obliged to render services to or work personally for the employer. The EAT said that the crucial question:

"was not whether any benefits flowed from the bureau [the purported employer] *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"*.

61. In *X v Mid Sussex Citizens Advice Bureau and anor* 2013 ICR 249, SC, the Supreme Court held that EqA did not apply to volunteers where there was no contractual relationship between the parties.

62. In *Melhuish v Redbridge Citizens Advice Bureau* 2005 IRLR 419, EAT, the EAT held that there was no contract of employment where the volunteer was not obliged to attend work and received no remuneration. Travelling expenses and free training were not sufficient to amount to remuneration.

Legally binding contract

63. The common law generally regards an agreement as having been made when there is an offer made by one party (offeror) and accepted by the other (the offeree). However, such an agreement may still lack contractual force because, for example, its operation is subject to a condition which fails to occur or because it was made without any intention to create legal relations, or for want of consideration.

Intention to create legal relations

64. Mance LJ said in *Baird Textile Holdings Limited v Marks & Spencer Plc* [2001] EWCA CIV 274 (***my emphasis***)

> "*59. ….**For a contract to come into existence**, there must be both (a) an agreement on essentials with sufficient certainty to be enforceable and (b)* ***an intention to create legal relations.***
>
> *60. Both requirements are normally judged objectively. Absence of the former may involve or be explained by the latter. But this is not always so.* ***A sufficiently certain agreement may be reached, but there may be either expressly (i.e. by express agreement) or impliedly (e.g. in some family situations) no intention to create legal relations****.*
>
> *61. An intention to create legal relations is normally presumed in the case of an express or apparent agreement satisfying the first requirement: see Chitty on Contracts (28 th Ed.) Vol. 1 para.2–146. It is otherwise, when the case is that an implied contract falls to be inferred from parties' conduct: Chitty, para.2–147. It is then for the party asserting such a contract to show the necessity for implying it. As Morison J said in his paragraph 12(1),* ***if the parties would or might have acted as they did without any such contract, there is no necessity to imply any contract. It is merely putting the same point another way to say that no intention to make any such contract will then be inferred****.*

65. Arrangements made in the private domain of friends, family and other social relationships usually do not amount to contracts because the law presumes that they are not intended to be legally binding. This is in contrast to commercial transactions where the presumption is that the parties to an express agreement intended to create legal relations.

Consideration

66. In English law, a promise is not, as a general rule, binding as a contract unless it is either made in a deed or supported by some "consideration".

67. The traditional definition of consideration concentrates on the requirement that "something of value" (or "*money or money's worth*") must be given and

accordingly states that consideration is either some detriment to the promisee (in that they may give value) or some benefit to the promisor (in that they may receive value). Although consideration need not be adequate, it must be "*of some value in the eye of the law*" (see - *Thomas v Thomas* (1842) 2 Q.B. 851, 859). Consideration may also be said to be lacking where it is clear that the promisee would have accomplished the act or forbearance anyway, even if the promise had not been made.

Conditional offers

68. Where an offer of employment is made "subject to satisfactory references", and the prospective employer does not regard the references as satisfactory, there is no binding contract. The test of "satisfactory references" is subjective and there is no obligation in law on the prospective employer, in considering the references, other than in good faith to consider them and to decide whether they were satisfactory to the employer (see - *Wishart v National Association of Citizens Advice Bureaux Ltd* [1990] I.C.R. 794).

Submissions and Conclusions

69. The claimant argued that there was an implied or oral contract between him and the respondent arising from his participation in the COG. He said he had offered to participate in the COG activities in organising the Event in return for having the opportunity to build his political capital, enhance his reputation, networking opportunities, access to Deputy Mayors, and possible future funding opportunities for his other work. He accepts that he was not entitled to any financial remuneration for his participation the group.

70. The claimant also relies on DWB referring to the respondent's standard code of conduct in her email to the claimant of 12 July 2021 (see paragraph 44 above).

71. The respondent argued that there was no oral or written contract between the claimant and the respondent arising from his participation in the COG. It was a purely voluntary undertaking, driven by a common desire to support the Event and its aims. There was no obligation on the claimant to attend the COG's meetings or indeed the Event. There was not remuneration provided for the participation. Both parties were free to withdraw from future activities at any time and for any reason with no sanctions attached. The reference to the code of conduct is immaterial.

72. I agree with the respondent's submissions. There was simply no contract of any kind between the claimant and the respondent arising from his participation in the COG. That was an informal arrangement for interested people to give their time and knowledge to the common cause they all wished to support. The participation in the COG was driven by their common interest

in the Event and its aims, not in return for any promises made to them by the respondent.

73. Looking at the arrangement objectively, there was clearly no intention to create legal relations between the respondent and the members of COG. They would have acted exactly in the same way by attending the meetings and helping with organising the Event, whether there was a contract or not. There are no grounds to imply a legal contract into this informal arrangement. The same applies to the claimant. There are no peculiar features of his association with the COG that would make his relations with the group and the respondent any different to those of other members of the COG.

74. I reject the claimant's submission that there was an oral contract. I accept the evidence of Ms McGrath that it was a purely informal arrangement and no oral promises had been made to the claimant which could give rise to a legally binding contract.

75. I do not accept that the opportunities the participation in the COG gave to the claimant (such as networking, building political capital, enhancing reputation, accessing officials at the Mayor's office) in law amount to consideration. The fact that the claimant anticipated that through his participation he might come across some future opportunities for a remunerated work, is not sufficient as a consideration either.

76. I also find that the reference to the respondent's code of conduct in the DWB's email of 12 July 2021 is insignificant. Just because a person is expected to abide by certain rules of conduct does not by itself give raise to contractual relations.

77. There are thousands of similar informal common interest groups, pressure groups, associations and clubs operating across the country, from political debating societies and environmental pressure groups to neighbourhood watch groups and book clubs. To suggest that members of such informal groups are "workers" and the organiser is their "employer" is nonsensical.

78. In short, I find that the claimant's participation in the COG did not give raise to any contract of any kind and therefore there was no contract of services or a contract for services between the claimant and the respondent.

79. With respect to the claimant's participation in the Commission, while there was a greater formality in the arrangement, nevertheless, in my judgment, it was still a purely voluntary arrangement. The claimant's appointment did not give raise to any legally binding obligation on the part of the claimant to do any work and for the respondent to make any such work available to the claimant. There was no "work-wage bargain".

80. Certainly, it was expected, and indeed documented in the ToR, that the claimant would personally participate in the work of the Commission. However, the claimant's failure to do so would not have resulted in any legal sanction on him. He would not have been held to be in breach of contract, if having accepted the appointment he then did not do any work for the Commission. The respondent would not have been able to sue the claimant for specific performance or damages. There was a "deal", but a deal binding in honour only. Members were under a "moral" obligation to participate in the work of the Commission, but that is not sufficient for a legally binding contract to arise.

81. There was no consideration either. Reimbursement of expenses is not sufficient to amount to consideration (see paragraph 62 above). I have already dealt with other "benefits" upon which the claimant relies as consideration (see paragraph 75 above).

82. In any event, even if I am wrong on that, and the arrangement between the respondent and the members of the Commission does amount in law to a legally binding contract, with respect to the claimant that contract has never come into force.

83. There was a conditional offer, which the claimant accepted. However, the respondent has never issued the claimant with the appointment letter and the ToR. The claimant has never signed, dated and returned the appointment letter.

84. Accordingly, even if there were any contact between the parties, it would have been a collateral contract to consider the claimant's references in good faith and appoint the claimant as a member of the Commission upon the respondent being satisfied with the references. However, that would be a different contract to a contract to provide personal service as a member of the Commission, which has never been effectuated. The claimant stepped down from the Commission while the reference process was still ongoing. Therefore, the condition precedent was never satisfied.

85. The fact that the claimant attended the first introductory meeting of the Commission is not sufficient to effectuate a formal contract, which required the respondent issuing a formal appointment letter together with the ToR and the claimant signing, dating and returning a copy of the letter. For the same reason the respondent's public announcement of the claimant's appointment is not sufficient to create a contract.

86. Finally, stepping down from the Commission before receiving and accepting the appointment letter cannot be said to have created contractual relations between the parties where none existed up until then.

87. For completeness, as the claimant placed strong reliance on the Supreme Court's decisions in *Uber* and *Autoclenz*, on the facts these decisions do not assist him. In both of those cases, there were contractual relations between the parties, albeit mischaracterised as self-employment, and the claimants in those cases did receive remuneration for their work.

88. To sum up, I find that there was no contract of any kind between the claimant and the respondent. It follows, that the claimant was not an employee or a worker of the respondent within the meaning of s.230 ERA and was not in the respondent's employment within the meaning of s.83 EqA. Therefore, s.94 ERA and Part 5 EqA do not apply to him, and the Tribunal does not have jurisdiction to consider his claims, which stand to be dismissed.

Employment Judge Klimov

7 January 2023

Sent to the parties on: 12 January 2023

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For the Tribunals Office

Public access to employment tribunal decisions

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