IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

Judgment of the Employment Tribunal in Case Number 4110018/2021 heard at Edinburgh on 7 & 8 July 2022

Employment Judge d'Inverno

Mr R Bartosik	**Claimant** **In Person**
Uber Scot Limited	**Respondent** **Represented by:** **Ms K Davies of Counsel instructed by Ms A L Thomond, Solicitor**

JUDGMENT OF THE TRIBUNAL

The Judgment of the Employment Tribunal is:-

(First) That the respondent has failed in its duties under s.1 and s.3 of the Employment Rights Act 1996 and in particular its duties under:-

s.1(3)(a) – Name of the Company and the Worker

s.1(4)(d)(ii)(a) – Any Terms and Conditions relating to Any Other Paid Leave

s.1(4)(ga) – Probationary Period

s.1(4)(j) – Collective Agreements affecting Terms and Conditions

s.1(4)(m) – Any Training Provided By The Employer Which The Worker Is Required To Complete

s.1(4)(n) – Any Other Training Which The Worker Required To Complete But Was Not Paid For By The Employer

s.3 – Note on Disciplinary Procedure

(Second) That otherwise, the respondent has complied with its obligations under s.1 and 3 of the Employment Rights Act 1996.

(Third) The terms which existed between the parties and which should have been included in a s.1 written Statement of Particulars of Employment and which, in terms of s.12(1) of the ERA 1996 are hereby deemed to have been given to the claimant by the respondent, are those recorded at paragraphs (52) to paragraph (81) of the Findings in Fact attached to this Judgment, which paragraphs are referred to for their terms and are held incorporated herein, for the purposes of brevity.

(Fourth) The claimant not having presented any claim other than one under s.1 of the ERA, is not entitled to a financial remedy.

NOTE

1. This case called for Final Hearing at Edinburgh, in conventional In Person form, on 7th and 8th July 2022. The claimant appeared in person. The Respondent Company was represented by Ms Davies of Counsel instructed by Ms Thomond, Solicitor.

Preliminary Matter

2. On 4th July 2022 the respondent's law agents sent to the claimant and to the Tribunal two documents being:-

   (a) a bundle of authorities to be referred to by the respondents at the Hearing; and

(b) "Respondent's Skeleton Argument for the Final Hearing 7-8 July 2022".

3. By email dated 4th July 2022 the claimant made application, in terms of Rule 30 for an Order "Striking Out" both documents in reliance upon Rule 42, on the grounds that they had not been delivered to the Tribunal and to all other parties "*not less than 7 days before the Hearing*".

4. Rule 42 is in the following terms:-

> "**42 Written representations**
> The Tribunal shall consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all parties not less than 7 days before the hearing."

5. By way of preliminary, the tribunal heard parties respectively in support of and in opposition to the application. Having heard parties the Tribunal:-

(a) determined that the bundle of authorities, not being written representations bur rather copies of case decisions containing potentially applicable law, did not fall within the terms of Rule 42,

(b) refused the application and,

(c) allowed the bundle of authorities to be received.

(d) determined that the respondent's Skeleton Argument was a written representation which did fall within the terms of Rule 42. while also accepting, as submitted by the respondent's representative, that its intended purpose was in part to put the claimant on an equal footing by providing him with advance notice of the respondent's contentions together with the

relevant statutory references and thus better facilitating his replying to them in oral submission; and that it did serve that additional purpose.

6. The terms of Rule 42 require the Tribunal to consider such a written representation where it is lodged and intimated not less than 7 days before the Hearing. Where lodged and intimated less than 7 days before the Hearing, as in this case, the Tribunal is not prohibited from considering the representation but, in the exercise of its discretion may do so.

7. The claimant remained adamant in his contention that the Tribunal ought not to consider the Skeleton Argument as a written representation arguing that if the respondents were allowed to rely upon it as opposed to making oral submissions it would be unfair to him given that he had had less than 7 days' notice of the document.

8. On balance, the Tribunal determined that the Skeleton Argument would not be considered as a written representation but would be available to both parties, as an aide memoire/reference, in the course of their making their oral submission, upon which oral submissions the Tribunal's determination of issues would proceed.

The Claim

9. The claim is one presented in terms of section 11 of the Employment Rights Act 1996 ("ERA") and is a complaint that the respondent failed to provide the claimant with a written Statement of Particulars as required by section 1 of that Act.

The Response

10. The respondent accepts that the claimant was not given a written Statement of Particulars of Employment when he began working for the respondent but contends:-

(a) that at the beginning of his engagement, the claimant was provided with a written contract which contained many of the required Particulars;

(b) that certain other of the required and permissible Particulars were set out in documents that were reasonably accessible to the claimant or were provided to him in instalments within the 2 month period prescribed.

(c) that in consequence, in relation to Particulars falling within sub paragraphs (a) and (b) above, there was no breach of a relevant requirement pursuant to sections 2(2), 2(4) and 7A of the ERA;

(d) that as the claimant had not brought one of the substantive claims listed in Schedule 5 to the Employment Act 2002 ("EA 2002"), he is not entitled to financial compensation for any breach of section 1 of the ERA 1996; and rather,

(e) the only remedy potentially available to the claimant which, in those circumstances the Tribunal would be empowered to grant, was a Statement of the Particulars that ought to have been included in a section 1 statement.

Sources of Oral and Documentary Evidence

11. The claimant gave evidence on his own behalf, on affirmation, in chief and in cross examination and answered questions put to him by the Tribunal.

12. For the respondent, the Tribunal heard evidence from Mr Simon Green, Manager of the respondent's "Green Light Hub" Teams in Europe and Africa which provide personal support to potential drivers going through the application process and, post their acceptance, when working as an Uber driver.

13. Parties lodged a Joint Bundle of Documents extending to 332 pages to some of which reference was made in the course of evidence and submission.

The Issues

14. The List itemising the issues requiring investigation and determination at Final Hearing, as approved by the Tribunal in terms of its Order of 24th June 2022 and confirmed with parties at the outset of the Hearing was in the following terms:-

"**LIST OF ISSUES**

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*The only claim the Claimant ("**C**") has permission to pursue is for failure to provide a written statement of particulars under s.1 of the Employment Rights Act 1996 ("**ERA 1996**").*

*The Respondent ("**R**") accepts C was not given a written statement of particulars of employment when he began working for R. Accordingly the following issues arise:*

A: LIABILITY

Use of Alternative Documents to Give Particulars

1. Should R's duty to provide a written statement of particulars be treated as met under s.7A(2) ERA 1996 in relation to any matter? If so, which matters? In determining this issue the following questions arise:

   1.1. Did R provide C with a document in writing in the form of a contract of employment or other worker's contract no later than the beginning of his engagement as per ss.7A(1)(a) and 7A(1)(c) of the ERA 1996?

   1.2. Did that document contain information in relation to the matters it mentioned that would meet R's obligation under s.1 of the ERA 1996 had the document been in the form required by s.1 of the ERA 1996?

1.3. If so, in relation to which of the matters set out in s.1 of the ERA 1996 was such information provided?

Other Reasonably Accessible Document

2. Were particulars of the matters specified in ss.1(4)(d)(ii) to (iii)[1] and s.1(4)(l)[2] of the ERA 1996 set out in some other document which was reasonably accessible[3] to C in accordance with s.2(2) of the ERA 1996?

3. If so, in relation to which matters were such particulars set out?

Particulars Provided by Instalment

4. Were particulars of the matters specified in s.1(4)(d)(iii)[4], s.1(4)(d)(j)[5] and s.1(4)(l)[6] of the ERA 1996 and/or the note required by s.3 of the ERA 1996[7] given to C no later than two months after the beginning of his engagement with R in accordance with s.2(4) of the ERA 1996?

5. If so, in relation to which matters were such particulars set out?

B: REMEDY

Declaration of Particulars under s.11 of the ERA 1996

6. In so far as particulars of any matter that should have been included in the statement of written particulars of employment were not a) deemed to have been provided in another document and/or b) provided in some other document that was reasonably accessible to C and/or c) provided by way of instalment within two months of C starting work for R:

6.1. What particulars ought to have been included or referred to in C's statement?

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[1] I.e. any terms and conditions in relation to any of the following: entitlement to holidays and holiday pay; incapacity for work due to sickness or injury including any provision for sick pay; any other paid leave; and pension and pension schemes.
[2] I.e. any training entitlement provided by R.
[3] This is defined in s.6 of the ERA 1996 as a document which the worker has reasonable opportunities of reading in the course of his employment or is made reasonably accessible to him in some other way.
[4] I.e. any terms and conditions in relation to pension and pension schemes.
[5] I.e. any collective agreements which direct affect the terms and conditions of the engagement.
[6] I.e. any training entitlement provided by R.
[7] I.e in relation to any applicable disciplinary processes.

6.2. In addressing this issue it is the role of the Tribunal to ensure "*the correct formulation of the contract as it was and not as it might have been*" is recorded: *Eagland v Britisih Telecommunications plc* [1993] ICR 644 i.e. it is the Tribunal's role to record the terms that existed between the parties in so far as they did; it has no power to include terms on any given matter where none actually existed and it should not interpret or construe terms that were included: the exercise under s.11 of the ERA 1996 is "*not an invitation to judicial creativity*": *Southern Cross Healthcare Co Ltd v Perkins* [2011] ICR 285.

Financial Compensation

7. Is C entitled to any financial compensation for any breach of s.1 of the ERA 1996 by R in light of s.38 of the Employment Act 2002? In determining this issue the following questions arise:

7.1. Has C successfully brought one of the substantive claims listed in Schedule 5 to the Employment Act 2002?

7.2. If so, was R in breach of its duties under s.1 of the ERA 1996 at the time that claim was brought?

8. If C is entitled to financial compensation, what amount of compensation should be awarded?

8.1. Should C be awarded the minimum amount i.e. two weeks' pay under ss. 38(2) and s.38(4)(a) of the Employment Act 2002?; or

8.2. Is it just and equitable in all the circumstances for the Tribunal to award the higher amount i.e. four weeks' pay under ss.38(2) and 38(4)(b) of the Employment Act 2002?

8.3. In either case, what constituted a week's pay for C?"

The Applicable Law

Statement of Particulars

15. Where a worker begins employment, the employer must give him a written statement of particulars of employment: s.1(1) ERA 1996.

16. That statement must:

16.1. Include the particulars set out in sub-sections 1(3) and 1(4) of the ERA 1996: s.1(2) ERA 1996;

16.2. Be given to the worker not later than the beginning of the employment: s.1(2) ERA 1996; and

16.3. Where there are no particulars of any matter required to be included, state that fact: s.2(1) ERA 1996.

17. However, a statement under s.1 of the ERA 1996 may:

17.1. Refer the worker to some other document which is reasonably accessible to him for particulars of any of the matters specified in subsections 1(4)(d)(ii) to (iii)[1] and s.1(4)(l)[2] of the ERA 1996: s.2(2) ERA 1996; and/or

17.2. Be given to the worker in instalments within two months of his employment beginning, in so far as it relates to the particulars required by subsections 1(4)(d)(iii)[3], s.1(4)(d)(j)[4] and s.1(4)(l)[5] and/or the note required by s.3[6] of the ERA 1996: s.2(4) ERA 1996.

18. A “reasonably accessible document” is one which the worker has reasonable opportunities of reading in the course of his employment or is made reasonably accessible to him in some other way: s.6 ERA 1996.

19. The employer's duty under s.1 of the ERA 1996 shall be treated as met in relation to any matter where:

19.1. The employer gives the worker a document in writing in the form of a contract of employment or other worker's contract not later than the beginning of the employment; and

19.2. That document contains particulars of that matter which, were the document in the form of a statement under s.1 of the ERA 1996, would meet the employer's obligation under that section: ss.7A(1)-(3) ERA 1996.

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[1] I.e. any terms and conditions in relation to any of the following: entitlement to holidays and holiday pay; incapacity for work due to sickness or injury including any provision for sick pay; any other paid leave; and pension and pension schemes.
[2] I.e. any training entitlement provided by the employer.
[3] I.e. any terms and conditions in relation to pension and pension schemes.
[4] I.e. any collective agreements which directly affect the terms and conditions of the engagement.
[5] I.e. any training entitlement provided by the employer.
[6] I.e. in relation to any applicable disciplinary processes.

Remedy

20. Where an employer fails to give a worker a statement of particulars or provides a statement that does not comply with the requirements of s.1 of the ERA 1996, the worker may require a reference to be made to the Tribunal to determine what particulars ought to have been included in such a statement: s.11(1) ERA 1996. The employer will then be deemed to have given to the worker a statement in which those particulars were included: s.12(1) ERA 1996.

21. When conducting this exercise, the Tribunal should record the terms that existed between the parties in so far as they did; it has no power to include terms on any given matter where none actually existed and it should not interpret or construe terms that were included:

21.1. It is the role of the Tribunal to record the correct formulation of the contract *"as it was and not as it might have been*": *Eagland v British Telecommunications plc* [1993] ICR 644; and

21.2. Section 11 of the ERA 1996 is "*not an invitation to judicial creativity*": *Southern Cross Healthcare Co Ltd v Perkins* [2011] ICR 285.

Financial Compensation

22. The ERA 1996 makes no provision for financial compensation for a breach of s.1 of the ERA 1996.

23. However, s.38 of the EA 2002 provides that where: 1) the Tribunal finds in favour of a worker in relation to any claim listed in Schedule 5 to the EA 2002; and 2) the employer was in breach of its duty under s.1 of the ERA 1996 at the time that claim was begun, the Tribunal:

23.1. Must make an award of two weeks' pay to the worker, unless there are exceptional circumstances which would render this unjust or inequitable; and

23.2. May, if it considers it just and equitable in all the circumstances, make an award of four weeks' pay to the worker.

24. For the purposes of s.38 EA 2002 a week's pay is calculated accordance with Chapter 2 of Part 14 of the ERA 1996 and shall not exceed the amount specified in s.227 of the ERA 1996: s.38(6) EA 2002.

25. In *Scott-Davies v Redgate Medical Services* [2007] ICR 348, the Employment Appeal Tribunal ("**EAT**") confirmed that the combined effect of the ERA 1996 and s.38 of the EA 2002 is that the Tribunal only has jurisdiction to make a financial award for a breach of s.1 ERA 1996 "*if there is already a valid claim*"

under Schedule 5 to the EA 2002; there can be no claim for a financial remedy where the only claim being pursued is for breach of s.1 of the ERA 1996: §§11 and 13.[7]

Findings in Fact

The generic term "Uber" where used, is a reference to the respondent or other Uber Group Company acting as agent for the respondent. References in the form [page number] are to pages in the Hearing bundle.

26. On the basis of the oral and documentary evidence presented, the Tribunal made the following essential Findings in Fact restricted to those relevant and necessary to the determination of the issues.

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[7] The EAT also noted that since the claimant in that case was no longer employed by the respondent, there could be *"no utility"* in the Tribunal determining what terms should have been included in a s.1 statement: §7.

The Uber App

27. Uber operates a mobile software application ("The Uber App") through which those seeking to be transported (known as "riders") are put in touch with those offering such services (known as "drivers").

28. In order to provide these services drivers must have access to a driver's account on the Uber App [**74**].

29. To "Weight lift" means to temporarily suspend a Driver's account, for example if a complaint requiring investigation is made against the Driver [**77**].

30. When Uber wishes to terminate a Driver's engagement, it will permanently "deactivate" the Driver's account [**77**].

31. Starting work as a Driver prior to driving for Uber for the first time, Drivers are required to:

    (a) Attend an "**onboarding**" session at which they view a presentation called "**Uber 101**"[8], which provides various details about driving for Uber [**159-207**]. The slides from this presentation are subsequently available and reasonably accessible to drivers online, using a link that is provided to them during the onboard session.

    (b) They review and accept the main contractual terms which govern the Driver's relationship with Uber, known as the "**Driver's Terms**" [**74-79**].

32. Without first clicking the "**yes, I agree**" button it is not possible for a Driver to go online and begin to accept rides.

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[8] The claimant in Scott-Davies heeded these comments and confirmed he no longer sought this remedy in light of these remarks: §18.

33. To "Weight lift" means to temporarily suspend a Driver's account, for example if a complaint requiring investigation is made against the Driver [**77**].

34. The "**yes, I agree**" button is located on screen on the same page as the Driver's Terms and appears at the end of the Terms, immediately below the sentence "by clicking "yes, I agree", you agree to be bound by these Driver's Terms [**74-79**].

35. Regardless of whether a Driver chooses to read or not to read the Driver Terms it is not technically possible for him to click the "**yes, I agree**", button without first scrolling through the Driver's Terms to their very end.

The Circumstances of the Claimant's Engagement

36. The claimant first expressed interest in becoming an Uber Driver in 2018. The claimant attended an onboarding session on the 24th of October 2018 but at that time did not proceed with his application.

37. In December 2020 the claimant attended one of Uber's "Green Light Hubs" which are physically located in various cities and which Drivers can attend for support with their account and other issues. Given the passage of time since the claimant's first attendance at an onboarding session he was, in December 2020, asked to attend a refresher onboarding session before his account could be activated. The claimant did so completing online training modules on Uber's "Edume" platform, links to which were provided to the claimant [**208**]. The online system had been set up and was being operated at that time to comply with Covid restrictions and the documents contained within it were reasonably accessible to drivers including to the claimant.

38. At the conclusion of the onboarding session the claimant clicked the "***Yes, I agree***" button confirming that he had reviewed and accepted the Driver Terms on 10th April 2021 [**93-95**] and started driving for Uber on 12th April 2021 [**247**].

39. In the course of his cross examination the claimant asserted, for the first time, that the Driver's Terms had appeared on his screen immediately after and not before he clicked the "**yes, I agree" button**. He stated that he had not read the Driver's Terms before agreeing to them and that they therefore should be treated as void.

40. The respondent's witness, Mr Green, stated in evidence that the sequence of events contended for by the claimant was not technically possible as the "***Yes, I agree***" button was part of and was located at the bottom (end of) the Driver's Terms and could only be accessed by scrolling through the Driver's Terms to their end.

41. On 12th April 2021 [**247**], the claimant started driving for Uber, as determined by the Supreme Court in **Uber BV and others (Appellants) v Aslam and others (Respondents)** [2021] UKSC5,:-

(a) in the capacity of a worker,

(b) who, being licensed in Glasgow, worked for Uber Scot Limited, the respondent in this case,

(c) under a "worker's contract", within the meaning of section 230(3)(b) of the Employment Rights Act 1996, section 54(3)(b) of the National Minimum Wage Act 1998 and Regulation 2(1) of the Working Time Regulations 1998.

42. The claimant's engagement with the respondent was formally terminated on 10th June 2021.

Communications between the parties

43. Uber sent to the claimant the following communications, relevant to the determination of the issues, during his time working with them as an Uber Driver. The communications were sent to the claimant on behalf of Uber Scot Limited and were part of standard communications sent to all Uber Drivers on behalf of or by the individual Uber member companies for whom they worked:-

(a) "Weekly Worker Update" of 21 April 2021 [**211**]

(b) "Your worker payment details" of 22 April 2021 [**212**]; and

(c) "Information about Uber's pension scheme" of 18th May 2021 [**225**]

44. Those communications were sent to the claimant via email [**226-232**].

Suspension and Subsequent Termination of the Claimant's Engagement

45. On 1st May 2021 Uber received a complaint that the claimant had made sexually inappropriate comments to a rider. His account was suspended on 2nd May 2021 to allow for investigation of this complaint.

46. On 10th June 2021, following further investigation and a failure on the part of the claimant to provide CCTV footage which he claimed to have in his possession and which, in his assertion disproved the complaint, the respondent terminated the claimant's engagement and permanently deactivated his Driver's account.

47. The Driver's Terms, provided to the claimant at the beginning of his "Employment" as a worker, and notwithstanding the misstatement of facts and law contained within them fell, within the definition of "*any other contract*" for the purposes of section 230(3)(b) of the ERA, and further constituted a written contract, which was provided to the claimant at the beginning of his engagement with the now respondent.

Status of the Documents provided to the Claimant

48. The respondent's duty under section 1 of the ERA 1996 falls to be treated as met in relation to any of the statutorily required Particulars set out in the Driver's Terms.

49. The Uber 101 slides and the emails sent to the claimant on 21st April, 22 April and 18 May 2021 were documents which the claimant had a reasonable opportunity of reading during his engagement with the respondent and were separately made reasonably accessible to him in other ways. The emails were provided to the claimant within 2 months of the start of his engagement.

50. Insofar as the Uber 101 slides and the emails of 21st and 22nd April and of 18th May 2021 contained the Particulars required by sections 1(4)(d)(ii) to (iii), section 1(4)(d)(j) and section 1(4)(l) of the ERA 1996, the respondents met their applicable obligations under section 1 of the ERA through those documents.

51. The Particulars of the Terms Agreed between the parties in relation to each of the matters required by SS.1 and 3 of the Employment Rights Act 1996 are as set out in paragraphs 52 to 81 below.

References to (page number) are to those in the Hearing bundle.

S.1(3)(a): Name of the Company and the Worker

52. Worker's name: Robert Bartosik.

Company name: Uber Scot Limited.[1]

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[1] As per *Uber BV & Ors v Aslam & Ors* [2021] UKSC 5.

S.1(3)(b) – Date when Employment Began

53. The date on which the Driver Terms are accepted by the worker. In the Claimant's case this was 10 April 2021.[2]

S.1(4)(a) – Scale/Method of Calculating Remuneration

54. The method of calculating Driver remuneration is as follows (where "You" and "Your" refer to the Driver and "Our" refers to Uber) [**76-77**].[3]

55. **Fares.**

a. *"You are entitled to charge a Fare to your Rider for each Ride. The "**Fare**" is calculated as a base fare amount plus actual or estimated distance and/or time amounts (subject to this clause 8 and 9.c below). The fare includes VAT, if applicable. Fares vary by region (detailed at www.uber.com/cities or in your Driver App depending on the product), and may vary depending on local supply and demand (known as "dynamic pricing"), and may also be adjusted at our discretion based on local market factors. We will provide you with notice of any change to any base fare or applicable distance and/or time amounts.*

b. *The Fare does not include any trip paid by your Rider. Riders may pay tips, either directly to you in cash or through the App. We will collect tips paid through the App on your behalf and remit them to you, without applying any Service Fee to them.*

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[2] See Clause 13 of the Driver Terms [**77**] and the Respondent's record of when the Claimant accepted these [**93-97**].

[3] *See Clauses 8 and 9 of the Driver Terms [**76-77**].*

c. *Any Ride surcharges incurred by you as part of a Ride (such as road, bridge, ferry, tunnel or airport charges) will be paid for by the Rider in addition to the Fare.*

d. *After a Ride you can instruct us to charge the Rider a lower Fare at your discretion.*

e. *Your Fares and other amounts we collect from Riders on your behalf will be remitted to you on at least a weekly basis, less the Service Fee payable under clause 9 below.*

f. *Fare adjustments:*

i. If your Rider requests an adjustment to the Fare you have charged for reasons such as an inefficient route having been taken, we will request your authorisation to adjust the Fare accordingly, for which a time limit may apply. You agree that you will consider such requests and shall not knowingly overcharge your Riders.

ii. In more serious situations, such as alleged fraud or charges for Rides that did not take place, you authorise us to adjust or completely cancel the Fare or Ride surcharges in our discretion and without checking with you in advance.

iii. If a Rider cancels their Ride prior to your arrival, we may charge that Rider a cancellation fee on your behalf, which you will receive less the Service Fee.

56. ***Our Service Fee.*** *Our Service Fee is on a per-Ride basis.*

a. The Service Fee is a percentage of the Fare or a cancellation fee (excluding surcharges and tips and all applicable taxes). If applicable, VAT will be added to the Service Fee.

b. You will pay us the Service Fee in consideration for the use of our Services. Our Service Fee percentage may vary between products, and may be adjusted in our discretion. We will provide you with advanced notice of any change.

*c. Pool: In consideration for the provision of the Pool option, you agree that the Service Fee you pay to Uber BV may vary on a per Fare basis based on Uber BV's success in finding additional Riders to share in all or part of a Ride (" **POOL Service Fee** "). The variable POOL Service Fee will be calculated as a percentage of the Pool Fare in question and will take into account the efficiency and compatibility of the additional Rider's anticipated route as part of the Ride. Uber BV will calculate the Pool Fare*

and the Pool Service Fee associated with each Ride and will display it to you in the Driver App."

57. The total amount of remuneration (defined as earnings plus incentives) due to Drivers on a weekly basis will be reviewed by Uber along with the expenses associated with the miles they drive. If necessary, Drivers will receive a "top-up" payment to ensure they receive not less than the applicable National Living Wage in any week. The methodology and manner in which this "top up" is made is set out in detail at https://www.uber.com/en-GB/blog/driver-worker-faq/.[4]

S.1(4)(b) – Intervals at which Remuneration is Paid

58. Remuneration will be remitted to Drivers on at least a weekly basis.[5]

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[4] See Frequently Asked Question Document, attached to email sent to the Claimant on 22 April 2021 [**214-217**].

[5] See Clause 8(e) of the Driver Terms [**76**].

S.1(4)(c) – Any Terms and Conditions relating to Hours of Work

59. Drivers may work when, where and for as long as they choose (subject to any license restrictions or local regulations on how long they may drive for consecutively for reasons of safety). As such there are no normal working hours; Drivers are not required to work on any particular days of the week and the days and hours Drivers work are variable at their complete discretion.[6]

S.1(4)(d)(i) – Any Terms and Conditions Relating to Holidays and Holiday Pay

60. Drivers are free to work or not work as and when they choose. As such, Drivers are free to take holiday whenever they wish and do not need to tell Uber when they are taking holiday or seek permission from Uber.[7]

61. As workers, Drivers are entitled to 5.6 weeks' paid holiday each calendar year in line with the Working Time Regulations 1998. Due to the complete flexibility which Drivers have to choose the times and days when they work for Uber, Drivers' holiday pay is paid to them on a weekly basis at 12.07% of earnings after expenses.[8]

S.1(4)(d)(ii) – Any Terms and Conditions Relating to Sickness/Sick Pay

62. Drivers are able to take leave whenever they are incapable of working due to sickness or injury without telling or seeking permission from Uber.[9]

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[6] See Clauses 7(a) and (b) of the Driver Terms [**76**].
[7] See Clauses 7(a) and (b) of the Driver Terms [**76**].
[8] See Frequently Asked Question Document, attached to email sent to the Claimant on 22 April 2021 [**217-218**].
[9] See Clauses 7a and 7b of the Driver Terms [**76**].

63. Uber does not pay contractual sick pay and Drivers are not entitled to receive statutory sick pay.[10]

S.1(4)(d)(ii)(a) – Any Terms and Conditions Relating to Any Other Paid Leave

64. Drivers may take a period of leave for any other reason (other than holiday or sickness) whenever they please without providing notice to or seeking permission from Uber.[11] Drivers are not entitled to be paid for any such period of leave.

S.1(4)(d)(iii) – Any Terms and Conditions Relating to Pensions and Pension Schemes

65. There was no pension or pension scheme in place at the time the Claimant's engagement was terminated.

S.1(4)(da) – Any Terms and Conditions Relating to Any Other Benefits

66. All Drivers are entitled to participate in Uber's loyalty and reward scheme known as Uber Pro. The terms and conditions relating to Uber Pro are set out "Uber Pro UK Terms and Conditions" [**138-152**].

S.1(4)(e) – Length of Notice

67. There is no need for a Driver to give Uber any notice in order to terminate their engagement with Uber. If they wish to do so they can either stop logging onto the Driver app or contact Uber via the Help section of the app or help.uber.com to ask for their account to be permanently deleted.[12]

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[10] See Frequently Asked Question Document, attached to email sent to the Claimant on 22 April 2021 [**214-219**].

[11] See Clauses 7a and 7b of the Driver Terms [**76**].

[12] See Clause 14a of the Driver Terms [**77**].

68. Uber may terminate a Driver's engagement with immediate effect if Uber concludes that there is a breach by the Driver of the Driver Terms.[13]

S.1(4)(f) – Job Title/Brief Description of Work

69. Drivers are engaged to provide transportation services ("Rides") to users of the Uber rider app ("Riders").

S.1(4)(g) – Period for which Employment is Expected to Continue

70. The Driver's engagement with Uber will continue until terminated in accordance with Clause 14 of the Driver Terms.[14]

S.1(4)(h) – Place of Work/Indication of Places of Work and Address of Employer

71. Drivers are permitted to work where they please subject to any geographic restrictions based on their private hire or taxi licence. They have no fixed place of work.[15]

72. The address of the Claimant's employer was 23/1 Silvermills Court, Henderson Place Lane, Edinburgh, Scotland, EH3 5DG.[16]

S.1(4)(i) – Collective Agreements affecting Terms and Conditions

73. There are no collective agreements in place that directly affect the terms and conditions on which the Claimant was employed.

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[13] See Clause 14b of the Driver Terms [**78**].

[14] See Clause 13 of the Driver Terms [**77**].

[15] See Clauses 7(b) and 7(c) of the Driver Terms [**76**].

[16] As per *Aslam* and c.f. [**74**].

S.1(4)(k) – Requirements to Work Outside the UK

74. Drivers are not required to work outside the United Kingdom for a period of more than one month or at all.[17]

S.1(4)(l) – Training Entitlement Provided by the Employer

75. Drivers are required to attend the "onboarding" training before their engagement with Uber begins.

76. Once employed by Uber, Drivers can attend a free disability and equality training session if they are interested in offering transportation services to

Riders with specific accessibility requirements. This training is available to Drivers who have completed 150 trips and have a rating of at least 4.7.[18]

S.1(4)(m) – Any Training Provided by Employer Worker is Required to Complete

77. Drivers are not required to complete any training provided by the employer other than the initial "onboarding" training, which is undertaken prior to the start of employment.

S.1(4)(n) – Any Other Training Worker Required to Complete Not Paid for by Employer

78. Drivers are not required to complete any training not paid for by the employer.

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[17] See Clauses 7(b) and 7(c) of the Driver Terms [**76**].

[18] See Uber 101 slides [**198**].

S.3 – Note on Disciplinary Procedures

79. Uber does not have formal disciplinary rules or a formal disciplinary procedure. However, Uber may temporarily restrict a Driver's access to the Driver app, if there is a suspected breach of their obligations as set out in clause 6 of the Driver Terms, or where Uber receives a serious safety complaint. There may be circumstances in which Uber is unable to provide Drivers with information about the complaint whilst an investigation is ongoing (either by Uber and/or a third party such as the police).[19]

80. Uber does not have a formal grievance procedure. However, if a Driver faces issues using Uber's services and/or has any complaints about its services or the Driver Terms, they can contact Uber via the "Help" section in the Driver's

App or by visiting help.uber.com. Uber will respond with an outcome to such contact within a reasonable period of time.[20]

Submissions of the Parties

Submissions of the Claimant

81. The claimant began by emphasising what he had stated in cross examination and what he considered to be an important point. He invited the Tribunal to find in fact that the Driver's Terms have not been exhibited to him on the website until after he had agreed to accept them. It was his position that they were not visible on the page before he clicked the "Yes I agree" button and that they immediately appeared after he had clicked that button. He therefore hadn't read the terms and conditions before he agreed to accept them and on that basis, he submitted, that none of them should be regarded as applicable to him and he should not be regarded as being bound by them. The respondents, for their part, should not be allowed to rely upon them for the purposes of satisfying their obligations under sections 1 and 3 of the Employment Rights Act 1996.

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[19] See Clause 14(a) of the Driver Terms [**77**].

[20] See Clause 22 of the Driver Terms [**79**].

82. He made the same submission on the separate grounds that the document contained errors in fact and in law because although it had been issued to him and to other drivers after the Supreme Court decision in **Uber BV and others v Aslam and others** [2021] UKSC5, they had not yet been updated to reflect the terms of the Supreme Court decision at the point at which he began to drive, for example, the company for whom he was working, the other party to the contract, was stated on the face of the terms and conditions to be "Uber BV" whereas, the Supreme Court had said that the appropriate company for him, he being licensed in Glasgow, should be "Uber Scot Limited". The claimant further submitted that the Driver's Terms relied upon by the respondent should be regarded as void and a non document because of the occurrence within them of what he considered to be unconventional

and or grammatically incorrect capitalisation of certain words. The claimant rejected the proposition that the respondents were entitled to satisfy their obligations in terms of section 1(4) and 6 of the ERA by providing Particulars partly in a statement provided to him at the beginning of employment (his working for them), and partly through other documents which were reasonably accessible to him. He also rejected the respondent's contention that they were entitled to provide certain particulars by way of instalments within a 2 month period of the commencement of his working. In the claimant's submission, in order to satisfy their obligations under section 1, the respondent required to provide him with a wholly accurate statement containing all the particulars of his employment, in a single document given to him at the commencement of his working for them. The respondents had not done so and therefore should be held to have failed to perform their obligations. The claimant submitted that was clearly the logic of the legislation.

83. Under reference to the terms of section 2(2) of the ERA which states:-

> "*A statement under section 1 may refer the worker … to the provisions of some other document which is reasonably accessible*",

the claimant submitted that it would be necessary for any document being relied upon for that purpose to contain an express reference to any other document upon which the respondents relied. In the claimant's submission the Driver's Terms, the principal document relied upon by the respondent, did not contain express reference to the other documents upon which they sought to rely and that therefore those other documents should not be regarded as falling within the scope of section 2(2). The claimant further submitted, separately and in any event, that nowhere in the documents relied upon by the respondents was there provided information about; a complaints procedure, or a disciplinary procedure, or sufficient information about the remuneration to be paid or, in relation to any other paid leave, or in relation to pension and pension schemes, or as to the absence of collective agreements or any other training required; and, that the

respondent should be declared to have failed in their section 1 obligations in relation to these particulars at least.

84. The claimant confirmed, in submission, that the only claim which he presented was the complaint of failure to comply with section 1 Employment Rights Act 1996 obligations.

Submissions for the Respondent

85. Counsel for the respondent commenced her submission by drawing the Tribunal's attention to the applicable law, all as recorded at paragraphs 15 to 25 above, in relation to;

(a) the obligation upon an "employer" set out in section 1(1) of the ERA, and

(b) in relation to the remedy which, in terms of his initiating Application ET1, the claimant sought including that of financial compensation.

86. In relation to the construction of section 2(2) of the ERA 96, while recognising as had been submitted by the claimant that it might be argued that the provision could only be relied upon where a section 1 statement is provided to the worker and that statement identifies the reasonably accessible documents in question, Counsel for the respondent invited the Tribunal to reject such a construction as too narrow.

87. Under reference to section 7A of the ERA 96, which was headed "*Use of alternative documents to give particulars*", she submitted that the requirements of this part of the ERA are concerned with substance rather than form and, in that context, the vital thing is that relevant information is provided in a document. She invited the Tribunal to conclude that where the required information was contained in documents which were reasonably accessible to the claimant, this met the requirements of section 2(2) of the

ERA 1996 notwithstanding the fact that no statement under section 1 was provided to the claimant.

The Position in Relation to Particulars Required

88. Against the background of the above general submission, the respondent's Counsel went on to set out the Particulars required under sub sections 1, 3 and 4 of the ERA, which in her submission fell to be regarded as provided, while also identifying the source document; and, those which the respondent accepted it had failed to provide. The detail of those submissions, which were accepted by the Tribunal, is reflected in the Findings in Fact set out at paragraphs 52 to 81 above and accordingly is not reiterated here.

Consideration and Determination

89. In relation to the contentious issue of fact as to whether the "Driver's Terms" became accessible and visible to the claimant before or immediately after he had clicked on the "**yes, I agree**" button which appeared at the foot of the last page of the conditions, the Tribunal preferred the evidence of the respondent's witness Mr Green. The evidence of Mr Green, which the Tribunal accepted as credible and reliable, was that in his consideration and to his knowledge the occurrence of the scenario described by the claimant was not technically possible, it being necessary to scroll down through the Driver's Terms before reaching and being able to access and click on the "**yes, I agree**" button. The claimant was not in a position to and did not seriously challenge that evidence in cross examination when Mr Green was recalled for the purposes of giving him that opportunity, albeit that he continued to assert that his version of events was correct notwithstanding the evidence given by Mr Green.

90. Separately, and in any event, the claimant stated in his own evidence that the terms and conditions did become available to him immediately after he clicked the "yes, I agree" button. The fact that a person does not read terms

and conditions before communicating their agreement to them does not, of itself, invalidate that agreement.

91. In relation to the scope of section 2(2) of the Act, while recognising the stateability of the position contended for by the claimant, on balance, the Tribunal preferred the submission of Counsel for the respondent. The Tribunal was satisfied that applying to them the normal rules of construction and according to the words used their normal English language meaning, the terms of section 2(2), when read in conjunction with the terms of section 7A of the ERA 1996, extend, for the purposes of the respondent's meeting its obligations under section 1, to required information of the permissible type contained in documents which were reasonably accessible to the claimant, notwithstanding the fact that no statement under section 1 of the 96 Act was provided to the claimant.

92. Otherwise, upon consideration of the submissions made and the oral and documentary evidence presented. the Tribunal reached the following conclusions and makes the following disposal in relation to performance by the respondent of its duty, arising under section 1 of the Employment Rights Act 1996, to provide the claimant with a Statement of Employment Particulars.

S.1(3)(a): Name of the Company and the Worker

93. The worker's name was that of the claimant, Robert Bartosik.

(a) The identity of the employer, as confirmed by the Supreme Court in **Uber BV and others v Aslam and others** [2021] UKSC5, is the Uber entity which holds the relevant operating licence for the area in which the driver in question worked.

(b) The claimant was licensed to drive and did drive in Glasgow and the relevant Uber entity holding the operating licence for Scotland is Uber Scot Limited.

(c) Accordingly the Particulars that ought to have been included under s.1(3)(a) of the ERA 96 are Robert Bartosik and Uber Scot Limited. The respondent did not provide those Particulars to the claimant at the start of his "employment" and in not so doing failed in its duty under s.1(3)(a) of the Act.

94. **S.1(3)(b) – Date when Employment Began**

(a) Clause 13 of the Driver's Terms specifies that the terms take effect on the date that they are accepted which is also the date on which the worker's employment begins. The claimant accepted the driver terms on 10th of April 2021. That information was contained in the Driver's Terms, and the respondent is deemed to have complied with its duty under s.1(3)(b) of the Act.

95. **S.1(4)(a) – Scale/Method of Calculating Remuneration**

(a) A driver's remuneration is made up of the fares/the sums he earns by driving, less the Service Fee deducted by Uber.

(b) Clauses 8 and 9 of the Driver's Terms set out the method by which fares and Uber's Services Fees are calculated [**76-77**]. That information was contained in the Driver's Terms. The respondent is deemed to have complied with its duty under s.1(4)(a) of the Act, in respect of that aspect of remuneration.

(c) More detailed information on fair calculation, along with worked examples, was provided to the claimant in the Uber 101 presentation [**180-183**] and an itemised breakdown of

remuneration actually earned was provided to the claimant by way of weekly summary statements, which were available to the claimant via WebPagePartners.Uber.com (to which he had been signposted during the onboarding process [**233-288**]).

(d) Following the Supreme Court Judgment in *Aslam*, which confirmed drivers were workers and thus entitled to the National Minimum Wage ("**NMW**"), Uber applied a "top up" payment to drivers' remuneration where their earnings would fall below the NMW in any given period **[211]**. This change was introduced as of the 15th of March but at the time the claimant signed up to the Driver's Terms (10th April 2021) they had not yet been updated to reflect it.

(e) The claimant was informed of the method of calculating the NMW top up via the emails sent to him on the 21st and 22nd of April 2021 [**211**] [**212**], the second of which contained a link to a Frequently Asked Questions document, which contained Particulars of how this top up payment was applied and calculated [**214-217**].

96. **S.1(4)(b) – Intervals at which Remuneration is Paid**

(a) Clause 8(e) of the Driver's Terms specifies that fares will be remitted to drivers on at least a weekly basis (there being an option for drivers to request payment more regularly for a small fee [**220]**).

(b) That information was contained in the Driver's Terms. The respondent is deemed to have complied with its duty under s.1(4)(b) of the ERA 1996.

97. **S.1(4)(c) – Any Terms and Conditions relating to Hours of Work**

(a) Clause 7(a) of the Driver's Terms specifies that drivers are under no obligation to use the driver's app and can log on to the driver's app if and when they choose. Clause 7(b) of the Driver's Terms specifies that the driver alone decides if, when, where and for how long she/he wants to use the driver's app [**76**].

(b) As such there were no normal working hours for the claimant, he was not required to work on any particular days of the week, the hours and days he worked were variable and they varied at his complete discretion.

(c) This information was contained in the Driver's Terms. The respondent is deemed to have complied with its duties under s.1(4)(c) of the ERA 1996.

98. **S.4(4)(d)(i) – Any Terms and Conditions relating to Holidays and Holiday Pay**

(a) As to entitlement to holidays:

(i) Clauses 7(a) and 7(b) of the Driver's Terms specified that drivers were free to drive or not drive as and when they pleased **[76**]. As such, drivers were entitled to take holiday whenever they chose without providing notice to or seeking permission from the respondent.

(ii) This information was contained in the Driver's Terms. The respondent is deemed to have complied with this aspect of its duties under s.1(4)(d)(i) of the ERA 1996.

(b) As to entitlement to holiday pay:-

(i) Prior to the Supreme Court Judgment in *Aslam*, Uber operated on the basis that drivers were self-employed contractors. As such no provision was made for the payment of holiday pay.

(ii) Subsequent to the Supreme Court's ruling, which confirmed that drivers were in fact workers and thus entitled to holiday pay, Uber made provision for drivers to be paid holiday pay while retaining the flexibility to work whenever they choose. These new arrangements were introduced as of the 15th of March 2021 but at the time the claimant signed up to the Driver's Terms (10th April 2021) the Terms had not yet been updated to reflect this.

(iii) Communications explaining the details of a new holiday pay entitlement were instead sent to all drivers, including the claimant, on 21 and 22 April 2021 [**211-212**]. The second of these communications contained a link to a Frequently Asked Questions document [**213-223**] which gave Particulars of how drivers' entitlement would be calculated, specifically "*the holiday pay payment is calculated every week: (earnings) multiplied by 12.07% this equals to [(earnings plus NLW (National Living Wage) top up minus vehicle expense plus CCZ (Congestion Charge Zone fee) charges minus CeLo (Central London) fees)] multiplied by 12.07%"* [**217**]

99. **S.1(4)(d)(ii) – Any Terms and Conditions relating to Sickness/Sick Pay**

(a) Clauses 7(a) and 7(b) of the Driver's Terms specified that drivers were free to drive or not drive as and when they pleased [**76**]. As such, drivers were able to take leave whenever they were incapable of working due to sickness or injury without

providing notice to or seeking permission from Uber. This information was contained in the Driver's Terms. The respondent is deemed to have complied with this aspect of its duty under s.1(4)(d)(ii) of the ERA 1996.

(b) The respondent does not pay contractual sick pay and drivers are not entitled to statutory sick pay. The respondent accepts that the fact that there were no material Particulars in relation to the provision of sick pay was not explicitly stated to the claimant at the start of his employment, however it was confirmed in the Frequently Asked Questions document, linked to in the email sent to the claimant on the 22nd of April 2021 which was a reasonably accessible document [**219**].

100. **S.1(4)(d)(ii)(a) – Any Terms and Conditions relating to any other Paid Leave**

(a) As they have total flexibility about when they work drivers are not entitled to any other paid leave. That position was not explicitly stated to the claimant at the start of his employment or in any other document that was reasonably accessible to him. The respondent failed in this aspect of its duty under s.1(4)(d)(ii)(a) of the ERA 1996.

101. **S.1(4)(d)(iii) – Any terms and Conditions relating to Pensions and Pension Schemes**

(a) As with holiday pay, a pension plan was only introduced for drivers after the Supreme Court's Judgment in *Aslam*. Updates on the roll out and details of this plan were sent to all drivers as they became available [**211**] [**225**]. The Particulars as were available prior to the claimant's termination were sent to him by email on the 21st of April and the 18th of May 2021 [**211**] [**225**].

(b) Those emails constituted reasonably accessible documents which were sent to the claimant not less than 2 months after the start of his engagement. As such the respondent's duty under s.1(4)(d)(iii) of the ERA 1996 was complied with in accordance with s.2(2) and 2(4) of the ERA 1996.

102. **S.1(4)(d)(a) – Any Terms and Conditions relating to Any Other Benefits**

(a) Uber runs a programme ("**Uber Pro**") whereby drivers can access certain rewards (such as discounts on fuel, valeting, gym memberships or Open University courses, in return for achieving specified ratings and cancellation rates [**138-58**].

(b) Particulars of the terms and conditions relating to Uber Pro are set out in a document titled "Uber Pro UK Terms and Conditions" which was accessible to the claimant via the driver's app. Further explanatory information was provided in a document titled "Introducing Uber Pro", which was accessible to drivers including the claimant from the publicly available website.

103. **S.1(4)(d)(2)(a) – Any Terms and Conditions relating to Any Other Paid Leave**

As they have total flexibility about when to work, drivers are not entitled to any other paid leave. That was not explicitly stated to the claimant at the start of his employment or in any other document that was reasonably accessible to him. The respondent failed in its s.1 ERA duty in this respect.

104. **S.1(4)(d)(iii) – Any Terms and Conditions relating to Pensions and Pension Schemes**

As with holiday pay, a Pension Plan was only introduced for drivers after the Supreme Court Judgment in **Aslam**. Updates on rollout and on details of this Plan were sent to all drivers as they became available [**2011**] [**2025**].

105. Those emails constituted reasonably accessible documents which were sent to the claimant not more than 2 months after the start of his engagement. As such the respondent's duty under s.1(4)(d)(iii) of the ERA 1996 was complied with in accordance with s.2(2) and 2(4) of the ERA 1996.

106. **S.1(4)(da) – Any Terms and Conditions relating to Any Other Benefits**

Uber runs a programme ("**Uber Pro**") whereby drivers can access certain rewards (such as discounts on fuel, valeting, gym membership or Open University courses) in return for achieving specified ratings and cancellation rates [**138-58**]. Particulars of the terms and conditions relating to Uber Pro are set out in a document entitled "Uber Pro UK Terms and Conditions" which is accessible via the driver's app. Further explanatory information can be found in a document entitled "Introducing Uber Pro", which drivers can access and at the material time could be accessed by the claimant from a publicly available website. The respondent's obligations under s.1(4)(da) were complied with.

107. **S.1(4)(e) – Length of Notice**

Clause 14(a) of the Driver's Terms specifies that there is no need for a driver to give any notice to the respondent in order to stop working for Uber [**77**]. Clause 14(a) further specifies that if a driver wishes to stop working for Uber he can either just stop logging into the driver's app or permanently delete his/her account by contacting Uber via the Help section of the app or help.uber.com.

108. Clause 14(b) of the Driver's Terms specifies that Uber can terminate a driver's engagement with immediate effect in the event of a breach of the driver's terms [**77**].

109. That information was contained in the Driver's Terms, and the respondent is deemed to have complied with its duties under s.1(4)(e) of the ERA 1996.

110. **S.1(4)(f) – Job Title/Brief Description of Work**

111. Clause 1(a) of the Driver's Terms describes the work that drivers do as follows;-

> "*Provide transportation services ("Rides") to users of the Uber rider app ("riders")"* [**74**]

112. That information was contained in the Driver's Terms, and the respondent is deemed to have complied with its duty under s.1(4)(f) of the ERA 96.

113. **S.1(4)(g) – Period for which Employment is expected to continue**

114. Clause 13 of the Driver's Terms specifies that they (and consequently, the driver's engagement) "*will continue until changed or terminated in accordance with Clause 14*" [**77**].

115. This information was contained in the Driver's Terms, and the respondent is deemed to have complied with its duty under s.1(4)(g) of the ERA 1996.

116. **S.1(4)(ga) – Probationary Period**

Drivers are not subject to any probationary period. That fact was not explicitly communicated to the claimant at the start of his employment. The respondent failed in its duties under s.1(4)(ga) ERA.

117. **S.1(4)(h) – Place of Work/Indication of Places of Work and Address of Employer**

Clauses 7(b) and 7(c) of the Driver's Terms specify that Drivers are permitted to work where they please subject to any geographic restrictions on their private hire or taxi licence (which is not provided by Uber) [**76**].

118. The Driver Terms also set out the address for Uber BV (a company established in the Netherlands which, prior to the Supreme Court Judgment in *Aslam*, was understood to be the counter party to the Driver Terms, as well as the address for Uber Scot Limited, which was subsequently confirmed to be the claimant's employer in terms of that Judgment [**74**].

119. This information was contained in the Driver Terms and the respondent is deemed to have complied with its duty under s.1(4)(h) of the ERA 1996.

120. **S.1(4)(j) – Collective Agreements affecting Terms and Conditions**

There are no collective agreements in place that directly affect the terms and conditions upon which the claimant was employed. That position was not expressly communicated to the claimant at the start of his employment. The respondent failed in its duty in relation to s.1(4)(j) of the ERA 1996.

121. **S.1(4)(k) – Requirement To Work Outside The UK**

Drivers are not required to work outside the United Kingdom for a period of more than one month or at all. This is implicit in the confirmation in Clauses 7(b) and 7(c) of the Driver's Terms, which specify that drivers can drive where they want subject to any geographic restriction on their private hire or taxi licence [**76**].

122. This information was contained in the Driver Terms, and the respondent is deemed to have complied with its duty under s.1(4)(k) of the ERA 1996.

123. **S.1(4)(l) – Training Entitlement Provided By The Employer**

124. Drivers are required to attend the "onboarding training". However, that is not a training entitlement provided by the employer as individuals must complete this before their engagement with Uber begins and thus before Uber becomes the employer.

125. Once employed by Uber, drivers can attend a free disability and equality training session if they are interested in offering transportation services to riders with specific accessibility requirements [**196**]. This training is available to drivers who have completed 150 trips and have a rating of at least 4.7.

126. Detail of this training was provided to the claimant in the Uber 101 slides, that is a document which was reasonably accessible to him. The respondent complied with its duty under s.1(4)(l) of the ERA 1996 in accordance with s.2(2) of the ERA 96.

127. **S.1(4)(m) – Any Training Provided By Employer Which The Worker Is Required To Complete**

128. Drivers are not required to complete any training other than the initial "onboarding" training, which is undertaken prior to the start of employment. That fact was not explicitly stated to the claimant in a Statement of Particulars or in the Driver Terms. The respondent failed in its duty under s.1(4)(m) of the ERA 1996.

129. **S.1(4)(n) – Any Other Training Worker Required To Complete Not Paid For By The Employer**

130. Drivers are not required to complete any training other than the initial "onboarding" training, which is undertaken prior to the start of employment.

That position was not explicitly stated to the claimant in a Statement of Particulars or in the Driver's Terms, nor was it available to the claimant in any other reasonably accessible form. The respondent failed in its duty under s.1(4)(n) of the ERA 96.

131. **S.3 – Note on Disciplinary Procedures**

132. The respondent does not have formal disciplinary rules or a disciplinary procedure. However, Clause 14 of the Driver Terms sets out the process for investigating suspected breaches of driver's obligations under the Driver Terms. Clause 14 further confirms that Uber may terminate the Driver Terms with immediate effect if they find that there has been a breach of the Driver Terms. This information was contained in the Driver Terms and the respondent is deemed to have partially complied with its duty under s.3 of the ERA 1996, to the extent only that that information covered the Particulars required.

133. The respondent does not have a formal grievance procedure. However, Clause 22 of the Driver Terms specifies that if a driver faces issues using Uber's services and/or has any complaints about its services or the Driver Terms, she/he can contact Uber via the "Help" section in the driver's app or by visiting help.uber.com [**79**]. Clause 22 further confirms that Uber will respond with an outcome to such contact within a reasonable period of time. This information was contained in the Driver Terms, and the respondent is deemed to have complied with its duty under s.3(b)(ii) of the ERA.

Remedy

134. The claimant has brought no claim other than the claim asserting a breach of s.1 ERA 96 obligation on the part of the respondent. In these circumstances he has no entitlement to any financial remedy.

135. The reason a fully compliant ERA 96 Statement was not provided to the claimant was that, prior to the Supreme Court decision in *Aslam*, the

respondent understood that drivers were self-employed contractors and thus that no such statement was required. Following the Supreme Court's clarification that drivers enjoy worker status, the respondent acted within such time as was reasonably practicable, to produce and provide fully compliant s.1 Statements to drivers [**100-107**].

136. The vast majority of the Particulars that ought to have been set out in a s.1 Statement were provided to the claimant in other permitted forms.

137. The claimant worked for the respondent for a short amount of time, working as a driver for just 3 weeks prior to being suspended. There was no evidence before the Tribunal that went to support the proposition that the claimant had suffered tangible harm as a result of any of the failures in s.1 ERA obligation which are set out above.

Employment Judge: Joseph d'Inverno
Date of Judgment: 02 September 2022
Entered in register: 27 March 2023
and copied to parties

I confirm that this is my Judgment in the case of Bartosik v Uber Scot Limited and that I have signed the Judgment by electronic signature.