EMPLOYMENT TRIBUNALS

Claimant: Mrs H Hughes

Respondents: 1. Vedamain Ltd
2. Clakim Ltd (formerly known as Cabbey Private Hire Ltd)
3. Janbar Mg Ltd (formely known as Chester Private Hire Ltd)
4. Kajoliea Ltd (formerly known as Refer Ltd)

Heard at: Liverpool **On:** 19, 20 and 21 December 2022

Before: Employment Judge Horne

Representatives
For the claimant: in person
For Vedamain Ltd: Mr M Ramsbottom, consultant
For the other respondents: Mr M Williams, director

Judgment was sent to the parties on 10 January 2023. The parties have asked for written reasons for that judgment under rule 62 of the Employment Tribunal Rules of Procedure 2013. The following reasons are therefore provided:

REASONS

Background

1. The claimant is a taxi driver. Vedamain Ltd is a taxi company. It operates in the Chester area under the names, "Abbey Taxis" and "KingKabs". It took over the Abbey Taxis business following a sale in December 2019. Prior to the sale, there were three companies trading as Abbey Taxis. I refer to these companies as "the old Abbey companies". Each of the old Abbey companies was directed by Mr M Williams. The claimant drove a taxi for the old Abbey companies. Following the business sale, the claimant drove her taxi for Vedamain Ltd. The claimant's case is that her employment transferred to Vedamain Ltd under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). In July 2020, the claimant stopped driving for Vedamain Ltd in circumstances that she claims amounted to a dismissal.
2. The claimant notified ACAS of her prospective claim on 19 October 2020. An early conciliation certificate was issued to her on 29 October 2020. Then, on 19 November 2020, the claimant presented a claim form to the tribunal.

The complaints and the preliminary issues

Initial identification of preliminary issues

3. There was a preliminary hearing before Employment Judge Benson on 18 January 2022. At that hearing, the claimant clarified the legal complaints that she was bringing. EJ Benson recorded the complaints in a written case management order which was sent to the parties on 4 February 2022. This is what she wrote:

> "(i) Ordinary unfair dismissal (against R1);
>
> (ii) Automatic unfair dismissal for making a public interest disclosure (against R1);
>
> (iii) Direct sex discrimination (the claimant relies upon the termination of her contract as the only act of less favourable treatment) (against R1);
>
> (iv) Unpaid holiday pay(against R1 andR2/R3/R4);
>
> (v) Unpaid wages, salary or other payments (against R1 and R2/R3/R4);
>
> And in addition (vi) A failure to consult on a TUPE transfer (against R1 and R2/R3/R4)."

4. "R1" was Vedamain Ltd and "R2", "R3" and "R4" were the old Abbey companies.

5. EJ Benson also decided that there should be a preliminary hearing to determine to preliminary issues. Her case management order defined those issues as follows:

> "
>
> (i) What is the claimant's employment status and who is or was her "employer" in relation to that employment status, and when?
>
> (ii) Are her complaints against one or more of these respondents in time and, if not, is there a basis upon which time might be extended?"

6. These are the issues I have to decide. The appear beguilingly simple.

Clarification of preliminary issues – the claim against Vedamain Ltd

7. At the start of the hearing before me, we discussed the issues again, to see if they could be further clarified or narrowed. There was additional refinement of the issues during the parties' closing submissions. What appears below represents the end-point of those discussions.

Unfair dismissal

8. It was agreed that, to have the right to bring a complaint unfair dismissal, the claimant would need to show that she was employed under a contract of employment within the meaning of section 230(1) of the Employment Rights Act 1996 ("ERA").

9. There was no need to decide any issue in relation to the statutory time limit in relation to the complaint of unfair dismissal. At the hearing before EJ Benson, Vedamain Ltd had conceded that the unfair dismissal complaint had been presented within the statutory time limit.

Wages – deductions made by Vedamain Ltd

10. Vedamain Ltd accepted that the claim was presented within the statutory time limit for any complaint in relation to wages that were alleged to have been unlawfully deducted during the claimant's employment with Vedamain Ltd.

11. During final submissions on Vedamain Ltd's behalf, Mr Ramsbottom conceded that the claimant had a contract with Vedamain Ltd and that that contract required her to work personally for Vedamain Ltd, so far as that work consisted of transporting school students under the local authority tender scheme.

12. This meant that the claimant would be a worker for Vedamain Ltd unless Vedamain's status was by virtue of the contract the customer of a business undertaking carried on by the claimant. I call this the **"business undertaking issue".**

Sex discrimination

13. The sex discrimination complaint was conceded to be in time. The only act of less favourable treatment of which the claimant complained was the termination of her contract.

14. I had to determine whether the claimant was an employee of Vedamain Ltd within the definition in section 83 of the Equality Act 2010 ("EqA"). The parties agreed that, although the statutory wording was different, the issue would stand or fall with the business undertaking issue.

Wages – Vedamain Ltd liability for deductions made by old Abbey companies – whether liability transferred

15. The claimant confirmed that her claim for deductions from wages (apart from holiday pay) was brought only against Vedamain Ltd and not against the old Abbey companies. She added, however, that her claim included a complaint that the old Abbey companies had made unauthorised deductions from her wages and that their liability in respect of that complaint had transferred to Vedamain Ltd under regulation 4 of TUPE.

16. The alleged deductions (as I understand them) consisted of:

    16.1. failure to pay the national minimum wage; and

    16.2. the deduction of "settle" fees from "wages" that had been earned by driving her taxi.

17. In order to be able to complain that the old Abbey companies had made any unlawful deduction from her wages, the claimant would need to establish that she was a worker for the old Abbey companies. That was a dispute within the remit of the preliminary hearing.

18. If the claimant was a worker for one of the old Abbey companies, and they had made an unauthorised deduction from her wages, there would then be an issue about whether the old Abbey companies' liability in respect of that deduction transferred to Vedamain. That dispute was not identified by EJ Benson as one of the preliminary issues.

19. It was accepted by both Vedamain Ltd and the old Abbey companies that an undertaking (namely the Abbey taxis business) had transferred from the old Abbey companies to Vedamain Ltd in December 2019. This was a relevant transfer within the meaning of regulation 3(1)(a) of TUPE.

20. Regulation 4 of TUPE operates where a person is employed by the transferor immediately prior to the transfer and assigned to the organised grouping of resources that transfers.

21. As I will record more fully under the heading of the relevant law, a "employee", for the purposes of TUPE, means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services.

22. Unfortunately, the parties did not make any submissions about what kind of employment status was required in order for the claimant to have been "employed" within the meaning of regulation 4. Nor did they address the question of whether the claimant had the requisite status. The parties' written and oral submissions on employment status were confined to the questions of whether the claimant was a "worker" or an employee under a contract of employment. I canvassed opinion from Mr Ramsbottom (Vedamain Ltd's representative) as to whether it was necessary to determine whether the claimant was a "worker" for the old Abbey companies. He indicated that Vedamain Ltd would be content if I did not make that determination.

23. I did not announce a judgment directly on the question of whether liability had transferred to Vedamain Ltd. Likewise, the judgment sent to the parties did not expressly address it. On the other hand, whilst explaining my reasons orally, I did make an observation that I did not think that liability had transferred. I made that comment shortly after concluding that the claimant was not employed under a contract of employment. The impression that I may have determined that question would have been supported by the case management order, which I caused to be sent to the parties separately on 10 January 2023 ("my CMO"). My CMO did not list any issues that would enable the tribunal to determine whether liability had transferred under regulation 4 or not.

Wages – inherited liability – time limit

24. If liability in respect of the old Abbey companies' unauthorised deductions did transfer under TUPE, the tribunal would have to decide whether it had jurisdiction to consider the claim in respect of the pre-transfer deductions. This would fall within the scope of the preliminary issues listed by EJ Benson, as it would involve consideration of the statutory time limit.

25. A critical question here would be the date on which the statutory time limit started to run. In turn, that would depend on which deductions, if any, were part of the same series as deductions that were allegedly made by Vedamain Ltd. Questions relevant to that determination would include:

    25.1. Did the TUPE transfer itself break the series of deductions?

    25.2. Was the deduction of settle from school transport payments part of the same series as deductions of settle fees from fares earned whilst driving on the Abbey taxis app?

    25.3. Was alleged failure to pay the national minimum wage whilst driving school runs part of the same series of deductions as failure to pay the national minimum wage whilst driving on the Abbey taxis app?

    25.4. Were there any breaks between school runs or school journeys that brought a series of deductions to an end?

26. Unfortunately, the parties did not focus their submissions on any of these points. I did not determine them.

27. If the claim for a particular deduction was presented after the statutory time limit expired, I would need to consider whether the time limit could and should be extended. See paragraph 29 for the issues in relation to the extension of time. Whilst the parties did address those questions, they did not do so in the context of a break in a series of deductions. The time limit may have started to run from a different date, and the practicability of presenting the claim may have been different at that time. I did not, therefore, determine whether I could grant an extension if one were required.

TUPE failure to inform or consult

28. So far as Vedamain Ltd was concerned, this left the complaint of failure to inform and consult under regulation 15 of TUPE. The statutory time limit for that complaint ran from the date of the transfer.

29. The issues were:

    29.1. Was it reasonably practicable the claimant to present this part of the claim before the statutory time limit expired?

    29.2. Was this part of the claim presented within such further period as the tribunal considers reasonable?

30. If those issues were determined in the claimant's favour, the tribunal would then have to determine whether the claimant was an "affected employee" within the meaning of regulation 13 of TUPE. That would depend on whether the claimant was employed under a contract that was not a contract for services.

<u>Clarification of the preliminary issues – the claim against the old Abbey companies</u>

31. At the start of the hearing, we also clarified the preliminary issues in respect of the claim against the old Abbey companies. The claimant told me that the only complaints she was bringing against the old Abbey companies were:

    31.1. Failure to inform and consult in relation to a relevant transfer; and

    31.2. Unauthorised deduction from holiday pay.

32. Time limit issues were potentially determinative of both these complaints, regardless of the employment status issues. This was because:

    32.1. If the claimant was employed by the old Abbey companies under a contract that was not a contract for services, any liability for holiday pay would transfer to Vedamain Ltd under regulation 4 of TUPE. The old Abbey companies, as transferors, would have no liability and the claim against them would fail.

    32.2. If, on the other hand, the claimant's employment with the old Abbey companies was under a contract for services, there would be no transfer. Liability would remain with the old Abbey companies, but the tribunal would have to consider the statutory time limit. The issues would be:

        (a) Was it reasonably practicable the claimant to present this part of the claim before the statutory time limit expired?

(b) Was this part of the claim presented within such further period as the tribunal considers reasonable?

33. The time limit for the regulation 15 TUPE complaint started to run from the date of the transfer, irrespective of the claimant's employment status with the old Abbey companies. The time limit issues were the same as at paragraph 29 above.

Issues and decisions at a glance

34. The issues I had to decide are summarised in the following table. I have added an additional column to show how, if at all, I determined those issues. Needless to say, I have prepared the information in that column having already sent judgment to the parties. I did not, of course, determine any of these issues without first going through the steps addressed in my reasons below.

	Complaint	**Statutory provision**	**Brought against**	**Employment status issues**	**Time limit issues**	**Determination**
1.	Unfair dismissal	Sections 94 and 98 ERA	Vedamain Ltd	Whether employed by Vedamain Ltd under a contract of employment	None	Not a contract of employment
2.	Automatic unfair dismissal for making a protected disclosure	Sections 94 and 104A ERA	Vedamain Ltd	Whether employed by Vedamain Ltd under a contract of employment	None	Not a contract of employment
3.	Directly discriminatory dismissal because of sex	Sections 13 and 39(2)(c) of EqA	Vedamain Ltd	Whether employed within the meaning of section 83 EqA (which depended on the business undertaking issue)	None	Employed within section 83
4.	Deduction from holiday pay	Regulation 14 WTR, section 13 ERA	Vedamain Ltd	The business undertaking issue	None	The claimant was a worker
5.	Deduction from holiday pay	Regulation 14 WTR, section 13 ERA	Old Abbey companies	Whether the claimant was a worker for the old Abbey companies	(a) Whether reasonably practicable to present claim within 3 months of employment ending with old Abbey companies (b) Whether claim presented within further reasonable	Tribunal has no jurisdiction because of statutory time limit Employment status not determined

					period	
6.	Deduction from other wages by Vedamain	Section 13 ERA	Vedamain Ltd	The business undertaking issue	None	The claimant was a worker
7.	Deduction from other wages by old Abbey companies, liability inherited by Vedamain	Section 13 ERA Regulation 4 TUPE	Vedamain Ltd	Whether the claimant was a worker for the old Abbey companies Whether the claimant's employment status was such that liability transferred under regulation 4	The issues in paragraphs 25 and 29 above	Worker status not determined No written judgment on the question of any transfer under regulation 4, but possible oral determination.
8.	Failure to consult on a TUPE transfer	Regulation 15 TUPE	All respondents	Whether the claimant was an affected employee of the old Abbey companies	(a) Whether reasonably practicable to present claim within 3 months of transfer (b) Whether claim presented within further reasonable period	Tribunal has no jurisdiction because of the statutory time limit No determination of employment status

Evidence

35. The claimant gave oral evidence on her own behalf. She called Mr Fairclough, Mrs Evans, Mr Swift, Mr Moore and Ms Barron as witnesses. Vedamain's witnesses were Mr Ward and Mr Thomas. Finally, Mr Williams gave oral evidence on behalf of the old Abbey companies.

36. I also considered documents in an agreed bundle consisting of 258 pages.

Facts

37. The claimant is a taxi driver. She drives a multi-passenger vehicle which she owns. This has been the case for the whole of the time with which this claim has been concerned. The vehicle is fitted with a tail-lift to make it easier to accommodate a wheelchair. She insures the vehicle herself.

38. At the relevant times, the claimant had a private hire driver's licence, meaning that she was authorised to drive pre-booked passengers for a fare. Her licence conditions were determined by the Licensing Authority. Conditions included:

    38.1. specification of the vehicle,

    38.2. maintenance requirements for the vehicle,

    38.3. restrictions on signage and advertising,

38.4. the requirement to keep the vehicle and interior clean and tidy,

38.5. prescribed fares to be charged or programmed into the taxi meter.

39. Some drivers (often called “Hackney drivers”) have their own operator’s licence. This means that they can pick up passengers on the street without a booking. The claimant was not a Hackney driver.

40. Prior to 2011, the claimant drove a taxi in Flintshire. She knew some of the other Flintshire drivers well. At some point shortly before February 2011, the Flintshire taxi operator “removed me from my work for no apparent reason”. I was not told the precise circumstances, but it had something to do with the claimant asserting her employment status as a driver.

41. In February 2011, the claimant spoke to Mr Williams with a view to driving in the Chester area. She remained in contact with the Flintshire drivers.

42. The claimant went to the Abbey Taxis office and met Mr Allan Moore. He helped her submit an application form to the Licensing Authority. She successfully completed the Authority’s taxi test (called "Transportation of Passengers for Hire and Reward") and a driving assessment. Her details were checked with the Disclosure and Barring Service (DBS). She was then given her "badge". She began working for Abbey Taxis in April 2011.

43. There was no written agreement between the claimant and Mr Williams, or between her and any of the old Abbey companies. The parties’ rights and obligations were determined orally and by custom and practice. In broad terms, the agreement was that:

43.1. Abbey Taxis provided the claimant with a radio for her vehicle.

43.2. Abbey Taxis agreed to accept private hire bookings under its operator’s licence.

43.3. Those bookings would then be allocated to drivers including the claimant.

43.4. Passengers generally paid their fare by handing cash to the claimant. When this happened, the claimant was entitled to keep the cash.

43.5. The claimant agreed to pay a weekly fee (known as the "settle") to Abbey Taxis.

44. The claimant gave receipts to customers as and when required.

45. Abbey Taxis prohibited drivers from promoting any other taxi business, including any taxi business of their own, either on the livery of their own vehicles or on business cards or receipts handed to passengers.

46. Drivers did not have a minimum number of trips that they were required to do, or a minimum length of time for which they were required to be available for work. They did, however, have a strong economic incentive to be available at peak times and to drive as many trips as they could. This was because they had to pay the same amount of settle, regardless of how much driving they did.

47. One of the night-time operators at Abbey Taxis was Miss Barron. If Miss Barron noticed that a driver appeared to be tired, she would advise him or her to have a cup of coffee. If that did not appear to work, she would “switch them off”, meaning that they would not be allocated any more driving trips that night. Apart

from that relatively nuclear option, it was left to drivers to decide how much work or to do or not to do on any particular day or night.

48. A few years after the claimant started driving for Abbey Taxis, the business started using a smartphone app instead of allocating jobs by radio. Each driver was issued with a company phone with the app pre-installed. Drivers would open the app when they were available to work. The software tracked the physical location of driver's vehicles and divided them into zones. Each zone had a separate queue of drivers. When a driver reached the front of the queue, the app would send a notification of the next job to that driver. The claimant was given no information at that stage about the number of passengers or what the destination would be. (This changed when the Abbey Taxis business was taken over by Vedamain Ltd.) The driver would then have a few seconds in which to decide whether to accept the trip or not.

49. If the driver did not accept the trip in time, the app would automatically send the driver to the back of the zone queue and impose a ten-minute penalty. Once the trip was accepted, the app would then provide further details of the passengers and destination. At that point, the driver could reject the trip, but if they did so, they would be sent to the back of the zone queue, and given the ten-minute penalty, in the same way as if they had failed to accept the trip in the first place.

50. The consequences of being sent to the back of the zone queue depended on the time of day when it happened. At quiet times, the driver would have to wait longer than the ten-minute penalty before reaching the front of the queue. During busier periods, a driver might reach the front of the queue before their ten minutes were up, in which case they would be overtaken by the drivers behind them until the penalty period had expired.

51. Zones, queues and time penalties could be overridden manually. Typically, the call operator would intervene where:

    51.1. it was obvious to the operator that would be more efficient to send a driver from a neighbouring zone;

    51.2. the driver informed the operator of a satisfactory reason for not accepting a job;

    51.3. or the automatic ten-minute penalty would mean keeping a customer waiting.

52. When doing private hire work, the driver would use their judgment to decide what route to drive. The price would be determined by the app. The driver and passenger could negotiate a different route with a different price, for example to drive around a traffic hotspot. Drivers were required not overcharge the customer.

53. Drivers never took paid sick leave. They never took paid annual leave. Certain drivers were treated as being on sick leave or on holiday if they were not available for driving. I do not know one way or the other whether drivers on holiday or sick leave benefited from any reduction in their settle. Drivers did not pay any Pay As You Earn income tax or employee National Insurance Contributions. They

described themselves as self-employed. They were described by Abbey Taxis as self-employed.

54. The old Abbey companies had contracts with local authorities to provide school transport. Here is an overview of the contractual framework. The local authority set up an online portal. Through the portal, private hire operators could tender for a regular school journey (called "the Services") for a particular child or group of children. The local authority would accept the lowest-priced tender for the Services, creating a contract between the local authority and the operator (called the "Contractor"). The contract was subject to the local authority's standard terms and conditions.

55. The standard terms included:

> 5.2 The Contractor shall ensure that a Driver shall carry a .. Contract Identification badge…
>
> …
>
> 5.4.2 The Contractor shall, no less than 7 calendar days before the commencement date of the contract, provide the Head of Service with a list of the names… of all the Drivers and Passenger Assistants who may be deployed in performance of the Services…
>
> …
>
> 5.4.2.2 The Contractor shall indicate on the list which Drivers and or Passenger Assistants he intends to regularly deploy in performance of the Services. Failure to comply with this condition may result in a warning being issued pursuant to the Contract…
>
> …
>
> 5.5 If required, the Driver and/or Passenger Assistant shall attend any training courses provided by the Council. A failure to attend following two invitations may result in the revocation of the Contract Identification Badge.
>
> …
>
> 14.4 The Contractor shall not sub-contract the Services without written permission from [the Transport Commissioning Service].
>
> …
>
> 18.1 Upon termination of the individual contracts the following notice periods shall apply. These periods of notice are applicable to the Council and Contractor.
>
> …
>
> > Wheelchair accessible vehicle (tail lift) – 6 weeks' notice period.

56. Abbey Taxis honoured paragraph 5.4.2.2 of the standard terms by informing the local authority of the names of the regular drivers on its school routes.

57. There was no separate agreement between the driver and the local authority.

58. None of Abbey Taxis' private hire drivers was required to do school transport work if they did not want to do it.

59. For those Abbey Taxis drivers who did agree to do school runs, Abbey Taxis and the drivers agreed to be bound by the following requirements. These were either expressly agreed orally, or agreed through custom and practice.

    59.1. If a driver chose to do school transport work, they were required by Abbey Taxis to meet with the family before starting to do the work.

    59.2. A driver could not change from one school run to another without Abbey Taxis' permission.

    59.3. I accepted Mr Swift's evidence about what the agreement was where a driver agreed to transport a group of children (as opposed to one child). It was up to the driver to decide on the order in which the children would be picked up on a school run. They would also decide the precise pickup times, within the confines of the arrival time at school that would be dictated by the local authority. The driver's obligation to Abbey Taxis was, having chosen the pickup times and the order of collection, to provide "input" to Abbey Taxis so they could pass on that information to the local authority.

    59.4. If a regular driver on a particular school run was unavailable for a particular journey, the driver could recommend another driver as a replacement, but could not simply substitute them without the operator's permission. The operator would not unreasonably withhold permission where the driver had a good reason for being unavailable such as holiday, sickness or vehicle breakdown.

    59.5. Mr Williams told me, truthfully I find, that, once a driver had started doing a school journey for a particular child or group of children, that driver was required to give notice to Abbey Taxis if they wanted to stop driving that journey. The amount of notice that the driver was required to give the operator was the same as the amount of notice that the old Abbey companies were required to give to the Local Authority under clause 18.1.

    59.6. Mr Williams' witness statement (on which he was not challenged) stated that Abbey Taxis paid drivers weekly for the school journeys they had driven that week.

60. The claimant was accompanied by the same Passenger Assistant for many years. Her name was Mrs Evans. They worked well together. Mrs Evans had her own local authority badge. The claimant recommended her to Abbey Taxis as the Passenger Assistant for the school runs that she was driving. Ultimately, however, it was for Abbey Taxis to decide who the regular Passenger Assistant should be for each school run. It was also Abbey Taxis' responsibility to notify the local authority who the regular Passenger Assistant was going to be, in accordance with clauses 5.4.2 and 5.4.2.2 of the standard terms.

61. In 2012, the claimant was the regular driver on the school run for a child to whom I will refer as "Child A". The school raised a concern, unfounded as it turned out, that a photograph of the child had been taken whilst inside the claimant's vehicle. The claimant and Mrs Evans were asked to attend a meeting at the school with a representative of the local authority. The evidence is silent as to who invited them to the meeting. I declined to make a finding about precisely who it was. (Mr Swift

says he cannot remember the incident. I couldn't find that it had been Mr Swift that had asked the claimant to attend the meeting, nor however did I think that it was possible to find that the school had approached the claimant directly without any involvement from Abbey Taxis. That would strike me as an unusual thing to happen. I would need some evidence that it had actually occurred in this case.)

62. Some time later, Abbey Taxis lost the contract for school transport for Child A. The family asked if the claimant would carry on driving Child A for a different operator. The claimant asked Mr Swift's permission and was refused.

63. The claimant bought her own fuel and paid her own vehicle maintenance costs. This was the case whether she was driving a school run or driving on the app.

64. Taxi companies in various UK cities face competition from platform-based operators and, in particular, from Uber. In about 2016, Uber started trying to expand its operations into the Chester area. This was naturally seen by Mr Williams as a threat to Abbey Taxis and by Vedamain Ltd as a threat to KingKabs. Their Office Managers started monitoring the Uber app, comparing the locations of Uber drivers with the GPS location of Abbey Taxis and King Cabs drivers. Mr Williams agreed with his opposite number at King Cabs that any driver found working for Uber would be "switched off". In other words, they would lose the opportunity to work for those operators.

65. Vedamain Ltd bought the Abbey Taxis business in 2019. An asset purchase agreement was concluded on 17 December 2019 between Vedamain Ltd and the old Abbey companies.

66. Schedule 5 of the asset purchase agreement listed 12 employees whose employment would transfer to Vedamain Ltd under TUPE. These employees were all office staff, such as dispatch controllers and telephonists.

67. In a further table (variously described as "Schedule 5 … Part 4" and "Schedule 6") the asset purchase agreement contained a list of "Self Employed Drivers". There were approximately 110 drivers in that list. The claimant was one of them. One driver was described as being on "sick leave". The table indicated that six other drivers were on "holiday".

68. The settle fee charged by Vedamain Ltd was £120.00 per week, regardless of how much driving the driver had done.

69. Similarly to the old Abbey companies, Vedamain Ltd did not enter into any written agreements directly with the Abbey Taxis drivers.

70. Following the acquisition by Vedamain, the claimant continued on the same school run as she had done with Abbey Taxis. This was under the same contractual framework as she had driven before. Other than the school journeys, she did not do any other driving for Vedamain. She did not, for example, do private hire driving on the app.

71. What of the 110 or so drivers who had previously been driving for the old Abbey companies? For them, the working arrangements continued more or less as normal. They continued using the same app. Because the Abbey Taxis app was

slightly different from the KingKabs app, Vedamain Ltd put some measures in place to harmonise the two platforms. One of these measures was to provide information about the passengers and the destination at the point of first notifying the driver of the trip. In other respects, however, the essential custom and practice remained unchanged. They continued under the same zone and queue system. They continued to pay their settle. They remained forbidden to advertise their own taxi business or any other competitor's business. They remained at risk of being "switched off" if they were found driving for Uber.

72. Mr Ward was a driver at Vedamain Ltd. He worked on a very similar school run to that driven by the claimant. He described to me the process by which Vedamain Ltd paid the driver. I accepted his evidence as truthful. He gave the example of the claimant's actual school run. The tender price was £55.00 per trip. That was how much the local authority paid Vedamain Ltd. Of that £55.00 contract price, £40.00 was paid to the driver, £14.00 was paid to the Passenger Assistant and £1.00 was kept by the operator (Vedamain Ltd) as a mark-up. From the driver's £40.00 was deducted a 6% operator's commission. This commission did not count towards the £120.00 per week settle, which had to be paid separately by the driver. There was no room for negotiation between the driver and Vedamain Ltd. The driver's remuneration package was presented by the operator to the driver as "take it or leave it".

73. I now rewind the clock to record some further findings of fact relevant to the statutory time limit.

74. In 2015 the claimant took legal advice about the possibility of bringing a claim against the old Abbey companies. She was advised by a barrister. The barrister told her she had a "50/50 chance of success" and that, if she lost her claim, she risked having to pay Abbey Taxis' legal costs.

75. At no time prior to the asset sale in December 2019 did the claimant ever suggest to Mr Williams that she was an employee of or worker for the old Abbey companies. She did not raise a grievance, she did not raise it with Mr Williams after the sale either. The claimant's reasons for holding back were:

    75.1. the advice that she had received from counsel;

    75.2. her fear that if she spoke out, she would no longer be allowed to drive for Abbey (based on her experience in Flintshire in 2011); and

    75.3. she did not think that the law was clear enough.

76. Until about two years ago, the claimant had limited access to the internet. She knew about Google, but was unable to make regular internet searches.

77. The claimant monitored the progress of the Uber drivers in their "class action" against Uber. The drivers were successful in the employment tribunal. The claimant became aware of their success shortly after the judgment was sent to the parties in their case in October 2016. She later learned that Uber were taking the case through various levels of appeal. Her understanding of the process was vague and she did not keep track of the various appeal judgments. The Court of Appeal dismissed Uber's appeal in 2018, but the claimant was not specifically

aware of that. What she did know from about 2018 was that Uber was appealing to the Supreme Court. She wanted to wait until the Supreme Court had made its decision before deciding on her prospects of success in bringing a claim about her own employment status.

78. The Supreme Court handed down its decision in the Uber appeal on 19 February 2021.

79. During the lifetime of the Uber case, the claimant spoke to other taxi drivers in the Chester area and to the drivers she had known in North Wales. They discussed the progress of the Uber appeals and what that meant for their own employment status. These conversations were an opportunity for the claimant to find out how Uber had fared in the Employment Appeal Tribunal and the Court of Appeal.

80. Following the asset sale, Mr Williams retired from the taxi business. He told me, and I accept, that he struggled to remember many of the details of what happened over the years whilst the claimant was driving for Abbey Taxis.

Relevant law

Contract of employment

81. Section 230 of ERA defines an "employee" as follows:

> "
>
> (1) In this Act, "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment."
>
> (2) In this Act "contract of employment" means a contract of service… whether express or implied, and (if it is express) whether oral or in writing."

82. In *Ready Mixed Concrete South East v. Minister of Pensions and National Insurance* [1968] 2 QB 497 at p515, McKenna J formulated the following test for deciding whether or not there was a contract of service:

> "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."

83. McKenna J later added (p516-517): "An obligation to do work subject to the other party's control is a necessary, though not always a sufficient, condition of a contract of service. If the provisions of the contract as a whole are inconsistent with its being a contract of service, it will be some other kind of contract, and the person doing the work will not be a servant. The judge's task is to classify the contract (a task like that of distinguishing a contract of sale from one of work and labour). He may, in performing it, take into account other matters besides control."

84. The *Ready Mixed Concrete* test is not the only test for determining whether a person is an employee, but it is the most frequently used (see *Quashie v. Stringfellow Restaurants Ltd* [2013] IRLR 99 at para 7).

85. The first element of the *Ready Mixed Concrete* test has been refined in *Cotswold Developments Construction Ltd v. Williams* [2006] IRLR 181 and, more recently, in *Varnish v. British Cycling Federation* UKEAT 0022/20.

86. In *Cotswold,* at para 54, Langstaff J said this:

> "Regard must be had to the nature of the obligations mutually entered into to determine whether a contract formed by the exchange of those obligations is one of employment, or should be categorised differently."

And at para 55:

> "The focus must be upon whether or not there is some obligation upon an individual to work, and some obligation upon the other party to provide or pay for it."

87. Applying the *Ready Mixed Concrete* test requires the tribunal to consider all the circumstances and "step back from an accumulation of detail" [1994] ICR 218, CA.

<u>"Employment" in anti-discrimination legislation</u>

88. The relevant wording of section 83(2) of EqA reads:

"

(2)"Employment" means—

(a) employment under a contract of employment… or a contract personally to do work;"

89. Protection of workers from discrimination is a principle of the Treaty for the Functioning of the European Union. Section 83(2)(a) must therefore be interpreted consistently with the definition of "worker" in European Union law. What is required under EU law is a person providing services under the direction of another in return for remuneration: *Allonby v Accrington and Rossendale College*: [2004] ICR 1328.

90. The employment must be "under" the contract. This implies that the employed person will be in a position of subordination to the putative employer: *Hashwani v. Jivraj* [2011] UKSC 40.

91. In *Secretary of State for Justice v. Windle* [2016] EWCA Civ 459, at para 9, Underhill LJ commented that the *Hashwani* distinction, although less explicit in section 83(2)(a), was the same as the "business undertaking" test in section 230(3)(b) of ERA. This comment was derived from the remarks of Baroness Hale in *Bates van Winkelhof v. Clyde & Co* [2014] UKSC 32, para 31. Where there is no contract of employment, the essential test is whether a person is in business on their own account performing services for a client or customer, or a self-employed person who does not fit into that category.

<u>Worker</u>

92. Section 230(3) of ERA provides, with my emphasis:

"

> (3) In this Act "worker" … means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
>
> (a) a contract of employment, or
>
> (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract **whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual**…"

93. Some working arrangements are casual. There may be no obligation on the employer to provide work, or no obligation on the putative worker to accept offers of work. In those circumstances, the question often arises whether the individual is a worker within section 230(3)(b) whilst actually working. In answering that question, the tribunal should take into account the absence of mutual obligations between assignments as a factor which may point towards the individual being in business on their own account: *Quashie* paras 10-13, *Windle* paras 22-25. But the tribunal should also recognise that other factors may point towards worker status, even if there was an express contractual right to refuse offers of work. One such factor, Underhill LJ said in *Pimlico Plumbers Ltd v. Smith* [2017] EWCA Civ 51 at para 145, was if the work was so regular that it was effectively continuous.

94. Ascertaining whether a person comes within section 230(3) is a question of statutory interpretation rather than contractual interpretation. The tribunal must look at the reality: *Uber BV v. Aslam* [2021] UKSC 5.

<u>"Contract for services"</u>

95. Regulation 2 of TUPE contains the following definitions, amongst others:

> "
>
> "contract of employment" means any agreement between an employee and his employer determining the terms and conditions of his employment;
>
> ….
>
> "employee" means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person's employer shall be construed accordingly"

96. The phrase, "or otherwise" in regulation 2 suggests that a person may be considered to be an employee even if their contract was not a contract of service or apprenticeship. This is the view taken by a differently-constituted employment tribunal in *Dewhurst v Revisecatch Ltd* (ET Case No 2201909/2018.

97. On the other hand, the exclusion of persons who provide services "under a contract for services" suggests that it is not enough to be a "limb (b)" worker as defined in section 230(3) of ERA. Nor is it enough for the putative employee to show that they were something more than a wholly independent contractor. I am also provisionally of the view that it is unlikely to have been Parliament's intention to afford the protection of the TUPE Regulations to workers in the wider sense. Had

that been Parliament's intention, the draftsperson could easily have adopted the definition in section 230(3) of ERA or section 83 of EqA.

98. Neither party made submissions on this point. I thought it best not to express a concluded view. I have set out my provisional views mainly as a guide to the parties when it comes to a reconsideration hearing.

Time limits

99. Section 23 of ERA provides, relevantly:

> (1) A worker may present a complaint to an employment tribunal- (a)that his employer has made a deduction from his wages in contravention of section 13…
>
> (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
>
> > (a)in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made…
>
> (3) Where a complaint is brought under this section in respect of—
>
> > (a) a series of deductions …
>
> the references in subsection (2) to the deduction … are to the last deduction … in the series …
>
> (3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).
>
> (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

100. Regulation 15 of TUPE provides, so far as is relevant:

> (1) Where an employer has failed to comply with a requirement of regulation 13 or regulation 14, a complaint may be presented to an employment tribunal.
>
> …
>
> (12) An employment tribunal shall not consider a complaint under paragraph (1) … unless it is presented to the tribunal before the end of the period of three months beginning with—
>
> > (a)in respect of a complaint under paragraph (1), the date on which the relevant transfer is completed…
>
> or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

> (13) Regulation 16A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (12).

101. Section 18A of the Employment Tribunals 1996 requires a claimant to notify ACAS of a prospective claim and to obtain a certificate before presenting a claim to an employment tribunal. Section 207B of ERA and regulation 16A of TUPE contain provisions for extending the time limit where a claimant has taken those steps.

102. "Reasonably practicable" means "reasonably feasible". It is not sufficient for a claimant to show that they acted reasonably. The claimant does not, however, have to show that presenting the claim on time was a physical impossibility: *Palmer and Saunders v. Southend-on-Sea BC* [1984] ICR 372.

103. Where the claim was presented late because the claimant did not know about the three-month time limit, the tribunal cannot extend the time limit unless the claimant proves that it was not reasonably practicable for the claimant to have discovered the existence of the time limit. The tribunal should take account of the enquiries that it would have been reasonably practicable to have made. If the claimant could reasonably have been expected to know about the time limit, the claimant must take the consequences: *Walls Meat & Co v. Khan* [1979] ICR 52, CA.

104. Where it was not reasonably practicable to present the claim in time, the tribunal must decide what further period it considers to be reasonable for presenting the claim. When doing so, the tribunal must take into account all the circumstances, including the strong public interest in claims being brought promptly, against the background of the primary time limit being three months: *Cullinane v. Balfour Beatty Engineering Services Ltd* UKEAT/0537/10 per Underhill J at paragraph 16.

Was the claimant a "worker" for Vedamain Ltd?

105. I must now apply the law to the facts as I have found them.

106. I start with the question of whether or not the claimant was a "worker" for Vedamain Ltd within the meaning of section 130(3) of ERA.

107. As I have previously noted, Vedamain Ltd accepts that it had a contract with the claimant. It is also common ground that, by the terms of that contract, the claimant was required to do the work of driving a taxi, and to do it personally. The claimant was therefore a worker unless Vedamain Ltd succeeds on the business undertaking issue.

108. Vedamain Ltd argues that the claimant was running her own business and that Vedamain Ltd was its customer. There are some factors that point towards that conclusion:

108.1. The claimant was not just providing her own work, she was also providing the use of a business asset. The service of transporting passengers, especially wheelchair users, was dependent on the claimant's own labour and skill, but it was also reliant on the claimant providing her own specially-adapted multi-passenger vehicle.

108.2. The claimant took considerable economic risk. She invested in the vehicle and its adaptation. She paid to maintain it. Not only that, but she paid

a fixed amount of settle, regardless of how much driving she did and how much money she earned.

108.3. The claimant had some freedom to decide how to provide the service of transporting passengers in a way that was most advantageous to her. She chose what vehicle to use. She could choose the order in which she collected individual students within a group, and adjust the pick-up times accordingly. She could decide what route to take, as long as it involved picking up all the students and getting them to school by a particular time. It would, of course be in her interests to choose the fastest route, because she would not get paid any more for taking a slower one. But that is the kind of economic reality faced by most businesses.

108.4. Although the claimant did not choose to apply for an operator's licence, she was free to work as a Hackney driver if licensed to do so.

108.5. The way in which the claimant provided transport services was tightly regulated (see paragraph 38), but these restrictions were imposed by the licensing authority, not by Vedamain Ltd.

109. Having taken the above factors into account, I have nevertheless concluded that the claimant was a worker for Vedamain Ltd. The following factors are in my view more persuasive:

109.1. First, Vedamain placed substantial restrictions on the claimant's freedom to drive for anyone else. With the exception of licensed Hackney driving, the claimant was effectively required to work exclusively for Vedamain Ltd. She was prohibited from working for any other operator and prohibited from advertising any other or her own driving services. Monopsony customers do exist, of course. A dominant customer can lock suppliers out of supplying anyone else. But that is not a typical feature of the business-customer relationship.

109.2. The respondent dictated the fee for a school run to the claimant. There was no room for negotiation. Again, some customers, such as supermarket chains, are in a position to dictate prices to their suppliers, such as farmers. But that is the exception. Most small businesses have some say in the price they charge to their customers.

109.3. There was a degree of integration of the claimant into the business. The claimant's provision of services and payment of settle was believed by Vedamain Ltd and the old Abbey companies to be sufficiently dependable as to include her as a business asset. Otherwise, there would have been no point in attaching the list of drivers as a schedule to the business purchase agreement.

109.4. There was a requirement that the claimant give notice to Vedamain Ltd if she wanted to stop driving a regular school run.

109.5. Whilst the claimant had considerable influence over who would be her Passenger Assistant, the final decision was up to the operator and not the claimant.

110. I therefore conclude that Vedamain Ltd was not a customer of the claimant's business undertaking, and find that the claimant was a worker within the meaning of section 230(3) of ERA.

111. The complaints of unauthorised deductions from holiday pay and wages by Vedamain Ltd will therefore proceed to a final hearing. There remains a live issue about the extent of the deductions that the tribunal should consider. In particular, I have not yet determined whether the tribunal can consider Vedamain Ltd's liability in respect of the old Abbey companies' alleged deductions. I will return to this question later in this judgement.

Employment status within equality law

112. It follows from the above conclusion that the claimant was also an employee within the wide definition of that word in section 83 of EqA.

113. The claimant's discrimination complaint against Vedamain Ltd will therefore be considered at a final hearing.

Was the claimant employed by Vedamain Ltd under a contract of employment?

114. I next consider whether the claimant's employment by Vedamain was under a contract of employment, within the meaning of section 230(1).

115. Again, I start from the agreed position. There was a contract by which the claimant agreed to do regular driving work on a school run in return for remuneration to be paid by Vedamain Ltd. The parties remained mutually bound by those obligations, subject to the claimant's entitlement to terminate a regular school run by giving notice to Vedamain Ltd. The notice period was equivalent to what Vedamain Ltd had to give to the local authority. The first requirement of the *Ready Mixed Concrete* test is therefore satisfied.

116. The next requirement is for there to be a sufficient degree of control. In my view, that requirement was not met. It is true that Vedamain Ltd restricted the claimant's ability to advertise and to drive for competitors. But restricting competition is only aspect of the kinds of control that employers typically exert over employees. Vedamain Ltd gave the claimant considerable freedom to decide how to provide transport for students. She decided what vehicle to buy. She could choose the route, as described at paragraph 108.3. The claimant had considerable influence (albeit not the final word) over Vedamain Ltd's choice of Passenger Assistant. There were controls on the claimant's work, for example, vehicle maintenance requirements, but as I have already explained at paragraph 108.5, this control was exercised by the local authority rather than Vedamain Ltd.

117. I have considered what the position would be if my conclusions about the sufficiency of control are held to have been wrong. In that case, I would have to decide whether the other features of the relationship were consistent with there being contract of employment.

118. I take into account the claimant's relatively weak bargaining power in the relationship. She had no say in the amount of settle she paid, or the driver's fee for a school journey. Nevertheless, my decision would be that, looking at the picture as a whole, the claimant was not an employee. Features I have taken into account in coming to that conclusion include the following:

    118.1. The claimant did not pay PAYE tax or employees' national insurance contributions. That tax arrangement would undoubtedly have been beneficial for her, because she would only have to pay tax on her profits, rather than on her remuneration from Vedamain. This would mean, for example, that the cost

of owning and running her vehicle would be wholly or mainly tax-free. The claimant's submissions on this point have been directed to the question of whether the tribunal should withhold a remedy on the ground of the parties' tax evasion. That is a different point entirely. To my mind, the significance of the tax arrangements is not that they were unlawful, but that they shed some light on the true nature of the relationship.

118.2. The claimant was consistently described as self-employed. She never suggested that she was an employee.

118.3. She was not paid sick leave or holiday pay.

118.4. The claimant took the economic risk of investing in a fixed-price asset and paying a fixed amount of settle. She paid for her own fuel. If fuel prices went up, she made less profit; if they went down, she made more profit. These features were inconsistent with a contract of service.

119. The claimant did not therefore have a contract of employment within the meaning of section 230(1) of ERA.

120. This means that the complaint of unfair dismissal must fail. To avoid doubt, my decision does not just prevent the claimant from bringing a complaint that her dismissal was unfair under section 98 of ERA. Her complaint of automatically unfair dismissal under section 103A must also fail, too. Not being an employee, she has no right to bring such a claim, whatever the alleged reason for dismissal.

Time limit – holiday pay claim against the old Abbey companies

121. So far, the only issues I have determined have been in the claim against Vedamain Ltd. I now turn to one of the two complaints against the old Abbey companies. This is the complaint of deduction from holiday pay. Assuming that the liability of the old Abbey companies did not transfer to Vedamain Ltd, does the tribunal have any legal power to consider the complaint?

122. The latest in any series of deductions allegedly made by the old Abbey companies must have been on the last occasion when a school run payment was properly payable by those companies. Since the school journey fee was paid weekly, the last such occasion could have been no later than one week after the date of completion of the transfer. The respondents all say that the transfer was completed on 17 December 2019. If that is right, the latest possible deduction was 24 December 2019. The statutory time limit expired three months (less a day) later, on 23 March 2020.

123. Coincidentally, that date is notorious as the start of the first national lockdown in response to the coronavirus pandemic. I have described it as a coincidence because the claimant has never suggested that the sweeping public health measures played any part in her delay in presenting the claim.

124. The claimant contends that the transfer was not completed until 24 December 2019. On that version of the facts, the last day for presenting the claim could have been no later than 30 March 2020.

125. I did not determine which of the two rival dates was the date of completion. The last day for presenting the claim could not have been later than 30 March 2020. If the deadline was actually a few days earlier than that, it would not have made any difference to whether it was reasonably practicable to present the claim on time.

126. The claim was not actually presented until 19 November 2020. The claimant needs an extension of time.

127. I must initially consider whether it was reasonably practicable for the claimant to present her claim by 30 March 2020 (or a few days earlier).

128. The claimant says it was not reasonably practicable to present her claim until she knew the outcome of Uber's appeal to the Supreme Court.

129. I disagree. Here are my reasons:

129.1. It was not reasonable for the claimant to think that her claim would be decided the same way as the Uber drivers' claim would be decided. The claimant must have known that her circumstances were different from those of the Uber drivers. The Uber case involved driving purely on a technology platform. The claimant had a separate agreement to drive a regular school run in return for weekly payment. She believed that both she and the operator were bound to that agreement whether her Abbey Taxis app was switched on or off. Waiting for the Supreme Court's Uber decision would not give her the answer to whether her own claim would succeed or fail.

129.2. Even without regular access to the internet, it was reasonably feasible for the claimant to find out the current progress of the Uber litigation. She already knew that the Uber drivers had succeeded in the employment tribunal. She was in regular contact with North Wales drivers and discussed the Uber case with them. She could have asked a friend to make a Google search for her. Those enquiries would quickly have revealed that the Uber drivers had already been successful in the Employment Appeal Tribunal and the Court of Appeal. She had no particular reason to think that the Supreme Court would overturn those two appellate decisions.

129.3. If the claimant was uncertain about the prospects of success of her own claim in the light of the pending Supreme Court decision, it would have been reasonably feasible for her to present her claim and then to ask for no action to be taken on it until the Supreme Court had handed down its judgment.

129.4. The claimant herself came to the view that it would be reasonably practicable to present her claim without waiting for the Supreme Court's decision. That is what she did in late 2020; the Supreme Court did not hand down its decision until February 2021.

130. I would in any case refuse to extend the statutory time limit for the claim against the old Abbey companies. Even if it was not reasonably practicable to present the claim by the end of March 2020, I do not consider that the additional delay of 7.5 months was reasonable. For this purpose, I have discounted the period during which the parties were engaging in early conciliation. The remainder of the delay had a significant impact on Mr Williams' ability to remember the facts. He had retired from the taxi business. The claimant had never asserted her employment status or claimed holiday pay whilst driving for the old Abbey companies. The strong public interest in timely presentation of claims exists precisely because of situations like this.

131. Still assuming that liability for holiday pay did not transfer to Vedamain Ltd, the tribunal has no jurisdiction to consider the claim for holiday pay against the old Abbey companies. If liability did transfer under TUPE, then the claim against the

old Abbey companies would have to fail for that reason. Either way, the complaint against the old Abbey companies must be dismissed.

Time limit – failure to inform and consult

132. The time limit for a complaint under TUPE regulation 15 started to run from the date of completion of the transfer. Depending on who was right about the completion date, the last day for presenting the claim was 16 or 23 March 2020.

133. The claimant has not put forward any separate reason for arguing that it was impractical for her to present this particular complaint within the time limit. The tribunal has no power to extend it for the reasons given above.

Deductions from wages by old Abbey companies – claim against Vedamain Ltd for inherited liability

134. I now turn to the claim against Vedamain Ltd in respect of deductions allegedly made by the old Abbey companies.

135. I have already explained that I did not resolve any time limit issues in respect of this part of the claim. This was because of the bespoke questions (see paragraphs 25 and 29) relating to series of deductions, on which neither party made any submissions.

136. I propose to consider these questions at a further preliminary hearing.

137. As I also explained at paragraph 23, I may have given the impression of having finally determined the question of whether the claimant was employed within the meaning of regulation 4 of TUPE. If it was a final determination, I do not set out any further reasoning in support of it. That is because I do not believe such a determination could stand. This is because:

137.1. It did not involve an application of the relevant legal test;

137.2. Neither party made any submissions on the point; and

137.3. It is possible that neither party realised that it was an issue for determination at all.

138. To the extent that I have determined the issue, it would be a judgment that falls to be reconsidered under rule 70 of the Employment Tribunal Rules of Procedure 2013. I propose to reconsider it on my own initiative. Whether revocation is necessary in the interests of justice is a matter that will be considered at a further hearing.

139. If there was a judgment, and if it is revoked, I may take the decision again at the next hearing. This means that the parties must be prepared to address this question:

> "Was the claimant employed by the old Abbey companies under a contract that was not a contract for services immediately before the transfer of the undertaking from the old Abbey companies to Vedamain Ltd?"

Was the claimant a "worker" for the old Abbey companies?

140. I declined to make a decision about whether the claimant was a worker for the old Abbey companies. This is because:

140.1. The issue is almost academic. Regardless of the outcome of that decision, the claim for holiday pay against the old Abbey companies would fail,

because the tribunal has no jurisdiction to consider it. The question may come back into play if the tribunal can consider the claim against Vedamain Ltd for inherited liability under regulation 4 of TUPE. But that depends on the answer to the questions I have summarised at paragraphs 134 to 139 above.

140.2. This is not the ideal case to make a determination of whether the claimant was a worker whilst driving on the app. Such a determination would potentially affect hundreds of other drivers. I have heard from very few of them. Of the witnesses from whom I did hear, much of the evidence was confined to the arrangements for school journeys.

140.3. If it is unavoidable to make that determination, the tribunal will of course do so. But in this case, it may well not be necessary.

Employment Judge Horne
23 March 2023

SENT TO THE PARTIES ON
3 April 2023

FOR THE TRIBUNAL OFFICE