EMPLOYMENT TRIBUNALS

Claimant: Ms Agnes Olawepo

Respondents:
(1) Combined Service Provider Limited
(2) The Jockey Club Racecourse Limited
(3) Central Surrey Health Limited
(4) NHS England
(5) Mr Peter Barker

Heard at: London South by MS Teams **On:** 6 - 7 November 2023

Before: Employment Judge Jones KC

Appearances:

For the claimant:	In person
For the First Respondent:	Mr Kasar Zaman, of Counsel
For the Second Respondent:	Ms Wendy Miller, of Counsel
For the Third Respondent:	Mr Charles Crow, of Counsel
For the Fourth Respondent:	Ms Camille Ibbotson, of Counsel
For the Fifth Respondent:	Did not appear

JUDGMENT

1. The Third Respondent is a "principal" within the meaning of **Equality Act 2010**, **s. 41**.
2. The Fourth Respondent is not a "principal" within the meaning of **Equality Act 2010**, **s. 41**.
3. The claims made against the Fourth Respondent are dismissed.

REASONS

Introduction

1. The Jockey Club ("the Second Respondent") operates Sandown Park Racecourse. Combined Services Provider Ltd ("the First Respondent") provides a variety of services to sporting venues. Amongst the services provided is cleaning. The Claimant worked as cleaner helping to provide those services. She was not directly employed by the First Respondent. Instead, she was supplied as an agency worker by a company called Syft Online Ltd, which trades as "Indeed Flex£. Both the First and Second Respondents accept that their relationship with the Claimant was that of Principal and Contract Worker within the meaning of **Equality Act 2010**, **s. 41**.

2. On 5 January 2021 England went into a third lockdown. On 17 May 2021 indoor hospitality, entertainment and attractions re-opened. On that same day a mass vaccination centre opened at the racecourse. The overall responsibility for the vaccination programme in England lay with NHS England ("the Fourth Respondent"). The vaccination centre at Sandown Park was operated by Central Surrey Health Ltd ("the Third Respondent"). 17 May 2021 was also the Claimant's first day of work.

3. The Claimant asserts that the Third and Four Respondents were also principals within the meaning of **s. 41**. That is assertion is disputed by all of the Respondents.

The Hearing

4. This is the third preliminary hearing in this case. There was a hearing before Employment Judge Smith on 31 January 2023 and a further hearing before Employment Judge Heath on 2 May 2023. At the latter hearing a further open preliminary hearing was listed to:

> "determine as a preliminary point whether the claimant was a contract worker, for the purposes of section 41 Equality Act 2010, of any of R2, R3 and R4, and whether she can bring a claim under the Act against any of them."

5. The hearing was conducted via CVP over two days: 6 and 7 November 2023. Each of the First to Fourth Respondents was represented by counsel. The Claimant represented herself, although she had help from a friend, Mr Steven Rolls. There is a fifth Respondent, Mr Peter Barker. He worked at the vaccination centre. He has not participated at any point in these proceedings and did not attend the hearing. It was unclear what, if any, specific allegations were being raised against him. I asked the Claimant who said that he had harassed her.

6. In addition to the question for determination set out in paragraph 4 above, there were a number of applications made by the respondents:

   (1) The First Respondent made applications for:

      (a) Strike out of the whole claim or, in the alternative, an order for further particularisation, on the basis that the claim had not been adequately particularised. That was said to mean first that the claim had no reasonable prospect of success and further and in the alternative that the Claimant was conducting the proceedings unreasonably;

(b) Strike out of the whole claim on the basis that it was out of time;

(c) Strike out of the victimisation claim on the basis that no protected act had been identified;

(d) Strike out of the unlawful deduction claim on the basis that it had no obligation to make any payment to the Claimant; and

(e) Costs arising from the Claimant's failure to attend the previous preliminary hearing on 31 January 2023 and for failing to comply with an order for particularisation;

(2) The Second Respondent made applications for:

(a) Strike out of the whole claim on the basis that insufficient particularisation meant either that it had no reasonable prospects of success or else that there was unreasonable conduct of the proceedings;

(b) Strike out of the whole claim on the basis that the claim was out of time; and

(c) Costs arising from a failure to attend the hearing on 31 January 2023;

(3) The Third Respondent made applications for:

(a) Strike out of the whole claim on the basis that the Claimant was not a contract worker;

(b) Strike out of the whole claim on the basis that the claim was out of time;

(c) Strike out of the whole claim on the basis of unreasonable conduct on the basis that the further and better particulars of claim already provided had been lengthy but unhelpful; the Claimant's non-attendance at the hearing on 31 January 2023; and the fact that the claim remained insufficiently particularised; and

(d) Costs arising from the Claimant's failure to attend the previous preliminary hearing;

(4) The Fourth Respondent made applications for:

(a) Strike out of the whole claim on the basis that it had no reasonable prosect of success, either because it was insufficiently particularised or because the Claimant was not a contract worker; or

(b) A deposit order on the basis that the claim had little reasonable prospect of success.

In her own skeleton, the Claimant indicated that she now wanted to make applications for costs and strike out orders.

7. I heard evidence from: Mr Manoj Jangra (Programme Manager for the Third Respondent); Mr Gareth Richardson (Operations Manager, employed by the Second Respondent); Ms Prabha Vijayakumar (Head of Vaccination Workforce and Equalities – Covid Vaccination Programme, South East Region, employed by the Fourth Respondent) and the Claimant.

8. It seemed to me that there was more to be done than the listing sensibly allowed and it was agreed with the parties that we would start by addressing the contract worker status issue. If time allowed we would then consider the question of inadequate particularisation of the claim. In practice we were able to deal with those issues. The question of time limits, costs and the Claimant's own applications could not be dealt with in the time available and will have to be resolved, if still pursued at a further hearing. I reserved my decision and illness has delayed its promulgation, for which my apologies to the parties.

Contract Worker Status (a) **The Law**

9. Discrimination against contract workers is prohibited by **S. 41** of the **Equality Act 2010** which provides:

> "(1) A principal must not discriminate against a contract worker –
>
> (a) as to the terms on which the principal allows the worker to do the work;
>
> (b) by not allowing the worker to do, or to continue to do, the work;
>
> (c) in the way the principal affords the worker access, or by not affording the worker access to opportunities for receiving a benefit, facility or service;
>
> (d) by subjecting the worker to any other detriment.
>
> (2) A principal must not, in relation to contract work, harass a contract worker.
>
> (3) A principal must not victimise a contract worker –
>
> (a) as to the terms on which the principal allows the worker to do the work;
>
> (b) by not allowing the worker to do, or to continue to do the work;
>
> (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
>
> (d) by subjecting the worker to any other detriment;
>
> (4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).
>
> (5) A "principal" is a person who makes work available for an individual who is –
>
> (a) employed by another person, and
>
> (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).
>
> (6) "Contract work" is work such as is mentioned in subsection (5).

(7) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection 5(b)."

10. The submissions made to me touched on the purpose of the provision, it being accepted that interpreting the provision must be done with a view to giving effect the legislators' purpose.

11. The EAT considered a predecessor provision (**Race Relations Act 1976**, **s. 7**) in **Harrods Ltd v Remick and others**. At the time of the **Remick** decision, the wording differed in a number of respects to the present provision[1]. There was a requirement for a contract to exist between the principal and the person employing the worker. The words in brackets at the end of **EqA 2010**, **s. 41(5)(b)** remove the requirement for a direct contractual relationship allowing, as it were, for a chain of contracts in which the employer and principal may both be found.

11. A second difference is that **s. 7** required that the worker to perform work "for the [principal]". **S. 41(1)** focuses not on whether the worker is doing work for the principal but on whether the principal makes the work available. That raises the possibility that a principal may make work available even if the work is not done for the benefit of the principal themselves although one might usually expect that it will be. The **Code of Practice on Employment** does not appear to take account of the difference in wording. At **Para 11.6** it says:

"A contract worker is a person who is supplied to the principal and is employed by another person who is not the principal. The worker must work wholly or partly for the principal, even if they also work for their employer, but they do not need to be under the managerial power or control of the principal."

[1] 7.— Discrimination against contract workers.
(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but by another person, who supplies, them under a contract made with the principal.
(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a contract worker—
(a) in the terms on which he allows him to do that work; or
(b) by not allowing him to do it or continue to do it; or
(c) in the way he affords him access to any benefits, facilities or services or by refusing or deliberately omitting to afford him access to them; or
(d) by subjecting him to any other detriment.
(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person not of a particular racial group at a time when, if the work were to be done by a person taken into the principal's employment, being of that racial group would be a genuine occupational qualification for the job.
(4) Nothing in this section shall render unlawful any act done by the principal for the benefit of a contract worker not ordinarily resident in Great Britain in or in connection with allowing him to do work to which this section applies, where the purpose of his being allowed to do that work is to provide him with training in skills which he appears to the principal to intend to exercise wholly outside Great Britain.
(5) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

12. In **Remick** the purpose of **RRA 1976 s. 7** was identified as being: "to extend the scope of protection against race discrimination in employment beyond the case of discrimination on grounds of race by an employer against his own employee."[1] That purpose is also the "evident purpose" of **EqA 2010**, **s. 41**. When **Remick** went to the Court of Appeal[2], the purpose was said to be: "providing a remedy to victims of discrimination who would otherwise be without one", which is clearly right but pitched at a level of generality such as to provide very little material guidance as to precisely where the line is to be drawn.

13. The differences in wording suggest that the protective scope of **s. 41** is cast a little wider than was that of **s. 7**, at least on its face. The explanatory notes to the Act suggest that the language has been changed to take account of case law:

> "This section is designed to replicate the effect of provisions in previous legislation, while codifying case law to make clear that there does not need to be a direct contractual relationship between the employer and the principal for this protection to apply."[3]

With that in mind, I turn to the case law.

14. In **Remick** in the Court of Appeal it was made clear that when considering whether someone performed work for an alleged principal, **s. 7** would apply even where those doing the work were not under the managerial power or control of the principal. In the Appeal Tribunal the touchstone had been whether the work was being done "for the benefit"[4] of the alleged principal:

> "It was work from which Harrods derived direct benefit without themselves having to employ a person to do the work available."[5]

The Court of Appeal's analysis was somewhat different:

> "Under Harrods's contractual arrangements with its licensees the members of staff will be selling goods that at the moment of sale belong to Harrods. They will be receiving from customers the price for the goods. The gross sums they receive will be paid over to Harrods, leaving Harrods to account to the licensee after deducting its commission. All of this work of selling Harrods's goods and of receiving the purchase money for the goods is work required by Harrods, under its contractual arrangements with the licensees, to be done by staff employed by licensees. And the contractual arrangements entitle Harrods to impose rules and regulations governing the conduct of staff members in the course of carrying out this work. Against this background, the work done by the staff members can, in the ordinary use of language, properly be described as work for Harrods."[6]

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[1] See Page 858 at E

[2] [1997] IRLR 583

[3] Explanatory notes Para 148

[4] See Page 849 at F

[5] See Page 859 at D

[6] See Page 585

Whilst, therefore, [7]Harrods exercised no managerial control over the concession workers, they could impose rules upon them. Breach of the rules allowed entitlement Harrods to withdraw permission for the workers to continue to work in Harrods. That would lead, as it did in the **Remick** case itself, to the termination of the worker's contract of employment. That led to an understanding in the Northern Ireland Court of Appeal case of **Jones v Friends Provident Life Office**[8] [2003] NICA 36, that it was insufficient for the worker to be performing work which their employer had undertaken should be done in a contract with the alleged principal. In other words, it was not enough that the work being done should be for the benefit of the alleged principal. As to what more was required, Carswell LCJ held:

> "The purpose of Article 12 [which was the NI equivalent of **RRA 1976 s. 7**] is to ensure that persons who are employed to perform work for someone other than their nominal employers receive the protection of the legislation forbidding discrimination by employers. It is implicit in the philosophy underlying the provision that the principal be in a position to discriminate against the contract worker. The principal must therefore be in a position to influence or control the conditions under which the employee works. It is also inherent in the concept of supplying workers under a contract that it is contemplated by the employer and the principal that the former will provide the services of employees in the course of performance of the contract. It is in my view necessary for both these conditions to be fulfilled to bring a case within Article 12."[8]

Even if managerial control was not required, therefore, some ability to "influence or control the conditions under which the employee works" was required in Lord Carswell's view.

15. **Jones** was subsequently considered in **Leeds City Council v Woodhouse**[9] [2010] EWCA Civ 410. Lady Justice Smith gave a judgment with which her two fellow judges agreed. She considered, amongst others, the passage of Lord Carswell's judgment set out immediately above. She also cited, amongst others, the following passage from the judgment of Lord Justice Nicholson:

> "I respectfully agree that Article 12 should receive a broad construction which has the effect of providing a statutory protection to a wider range of workers. For this reason, I am reluctant to define the limits to which it should be allowed to extend. It seems to me that its extent should not be defined by constructing limits which turn out to be unjustified. I believe that the cases covered by the article should be developed incrementally and that they will be determined by the facts of each, which cannot be anticipated."

Her ladyship then went on say that, whilst **Jones** was not binding on the Court of Appeal, she found the observations of both judges helpful and proposed to follow them. That, on the face of it, is a little surprising as Carswell LCJ is proposing that two factors should be "conditions to be fulfilled" to bring a case within Article 12 whereas Lord Justice Nicholson is saying that it is unhelpful to define limits to the provision's scope and each case should be decided on its facts. Lady Justice Smith then goes on, notwithstanding her assertion that she intended to follow

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[7] IRLR 783

[8] Page 787 Para 17

[9] [2010] IRLR 625

Carswell LJ's approach, to find that being in a position to influence of control the conditions under which the employee works is not a requirement for a party to be treated as a principal:

> "The authorities suggest that where the principal and the employer of the applicant are in the relationship of contractor and subcontractor, the mere fact that the applicant does work under the subcontract from which the principal will derive some benefit is not enough to bring the applicant within s.7. It may well be that, if it can be shown that the principal can exercise an element of influence or control, that will be enough to bring the case within s.7. But that is not to say that influence or control must be demonstrated in all cases. The judge in the present case considered that, due to the extreme closeness of the relationship between the contracting parties, it could properly be said that Mr Woodhouse's work was being done for the council, regardless of the exercise of control or influence. In my view, control and influence are not necessary elements, and it matters not that they have not been demonstrated in the present case."

16. I should also note that The Court of Appeal also determined that the work made available did not have to be made available to the specific claimant.

17. Summarising, the applicable principles appear to be:

    (1) A party is a principal if they make work available;

    (2) The work is performed by a person ("the worker") who is employed by another ("the employer"); and

    (3) The worker is supplied to the principal in furtherance of a contract to which the principal, but not necessarily the employer, is a party;

    (4) The worker will usually[10] "work for" the principal, but that is to be interpreted in a broad and purposive way. It will depend on a consideration of all factors relevant to the question including:

        (a) Whether the alleged principal benefits from the performance of the work; and

        (b) Whether the alleged principal has some degree of control and influence over the worker.

(b) The case on Contract Worker status

18. The Claimant's position on whether the Third and Fourth Respondent are principals for the purposes of **EqA 2010**, **s. 41** has evolved. I have been shown a document which sets out further information which she provided in response to an order from the Tribunal. The Claimant was asked to say whether she was a contract worker in respect of each respondent and, if she did, to set out the basis for that contention. In respect of the First Respondent she sets out the statutory test and explains how it is met. In respect of the Second Respondent she says that she was "in reality" acting as a contract worker for them. In respect of the Third and Fourth Respondents she says:

[10] I put it this way because the wording of the current provision no longer uses that language.

> "During my time spent working at Sandown Park Racecourse in the course of employment, my duties brought me into contact with members of staff and workers running the vaccine programme. I believe the Equality Act 2010 covers workers, including employed, contract workers and agency workers under UK law, I therefore believe that my case deserves full consideration otherwise certain groups of workers in the workplace would be treated less favourably without any recourse."

19. In her "Skeletal Argument" she asks the tribunal to "impose an implied contract of employment/service on the working relationship between [her] and [the First to Fourth Respondents] for the purposes of employment status as an employee or as a contract worker". The First and Second Respondents concede that the Claimant is a contract worker and that they are principals. The argument that the Claimant might be an employee of the Third and/or Fourth Respondent is a new one and not one that can be determined without evidence and argument. It was not advanced during the course of the hearing and, for that reason, I do not consider it further in this decision.

20. In respect of the Third Respondent, the Claimant says that vaccine centre staff monitored her (indeed, she goes so far as to say that they spied on her) and that they controlled her at least in the sense that they would allocate or try to allocate tasks to her. The Claimant says in her witness statement that this meant that she was a "pseudo contract worker of R3".

21. The Claimant also says that she was a "pseudo contract worker of R4". In her witness statement she says:

> "By virtue of being treated like a contract worker by R3 for R4, and by virtue of R3 providing Covid19 Vaccination services for R4 under an NHS Standard Contract 2020/21 (at pages 297-399 of the OPH bundle), I became a pseudo contract worker of R4. The NHS Standard Contract lists General Condition 5 (GC5)- Staff, at page 303 of the OPH bundle. NHS England and NHS Improvement commissioned and delegated the C19 Vaccination Programme tasks but NHS cannot delegate accountability and responsibility for the actions of staff that were providing their vaccine programme. I believe that R4 owes me a duty of care and partakes in liability for the detriment that I suffered from staff during employment." [Para 9]

(c) Was the Third Respondent a principal for the purposes of Equality Act 2010, s. 41?

22. The essence of the Third Respondent's case is that it contracted with the Second Respondent so that the latter was obliged to provide it with clean premises. Responsibility for cleaning lay entirely with the Second Respondent. In consequence:

    (1) the Third Respondent was not making work available to the Claimant; and

    (2) the Claimant was not supplied in furtherance of any contract to which the Third Respondent was a part.

The Third Respondent denies that it had any control over the cleaning, it simply benefited from clean premises just as any visitor would do.

23. In support of its contentions the Third Respondent relies upon the following evidence (which I extract from Mr Crow's helpful skeleton argument:

"11.1 By way of a licence agreement [400-417], R3 agreed to pay a daily fee to R2 for occupation of the premises (as defined at [401, 411]). The fee was expressly stated as being consideration for occupation (clause 3.1 at [402]), and was stated as being "inclusive of all costs incurred in the provision of Building Services to the Premises" (clause 3.4(c) on [404]). This included the cleaning of the Premises (see clause 1(a) on [400]);

11.2 The licence agreement expressly confirmed that R2 retained "control, possession and management of the Premises" [403 at §2.2(b)];

11.3 The Claimant "was assigned to cleaning duties at the Hall (i.e. the vaccination centre) as the day shift cleaner" (Mr Richardson's w/st at §14). Cleaning work within the day shift fell within the standard cleaning obligations of the licence (not the extension for night cleaning/cleaning outside of operating hours – the 'additional cleaning services not covered by the licence') – per Mr G. Richardson's w/st at §10, 12;

11.4 R2 enjoyed a contractual relationship with R1 for "day-to-day cleaning" of the site (Richardson w/st §6), in accordance with the cleaning specifications set out at Schedule 2 of that contract [256-7];

11.5 Responsibility for the management of the cleaning of the site lay with Mr G. Richardson (w/st §2), and R2's staff had the ability to instruct cleaners provided by R1 (Richardson w/st §7);

11.6 Induction was provided by R1, and daily briefings were conducted by R2 (Richardson w/st §13);

11.7 R2 (not R3) had the ability to dictate to R1 which cleaners attended (Richardson w/st §14);

11.8 Whatever may or may not have happened on the particular day relied upon by C (C's w/st at §7): R3 enjoyed no contractual right to instruct the cleaners provided by R1 to R2 (Jangra w/st §13);

11.9 R2 provided the necessary cleaning equipment (Richardson w/st §15);

11.10 There was no contract between R3 and R1 for the provision of cleaning services, contrary to the Grounds of Resistance of R1/R2 – as has now been conceded by both R1 and R2 – see [197 at §10]."

24. It is certainly true that the Third Respondent entered into a licence agreement with the Second Respondent; that the Second Respondent was obliged under the agreement to provide "Building Services"; and that those services included:

> "cleaning of the Premises including but not limited to emptying the bins at the Premises, cleaning the toilets, sweeping and mopping the floors" [Clause 1]

However, it did not include:

> "disposal of clinical waste in connection with [the Third Respondent's] use of the premises" [Clause 1].

According to Mr Richardson, who gave evidence on behalf of the Second Respondent, additional cleaning services going beyond those provided for in the licence agreement were required. Mr Richardson obtained a quotation for provision of those additional services from the First Respondent and Yvette Nicholson, the Estates Lead for the Third Respondent, accepted the quotation on 12 May 2021. It seems that the additional work took place after the vaccine centre's working day was over. It is not entirely clear whether the Third Respondent paid the First or the Second Respondent for that work. However, the Claimant did not work that shift.

25. The licence agreement makes reference to "Sessions". A session is defined as:

> "a period of time during which the Services will be delivered to members of the public or any other party which shall be during the Permitted Hours only" [Clause 1]

The Permitted Hours were 8 am to 8 pm Monday to Sunday.

26. Clause 4 sets out the Third Respondent's obligations. At Clause 4.3 it says that the Third Respondent agrees and undertakes to:

> "ensure the Premises are clean, tidy and clear of rubbish (including clinical waste) at the end of every Session."

It seems, therefore, that the obligation to ensure the premises were clean fell upon the Third Respondent even if it was anticipated that that obligation would be met by the Third Respondent purchasing cleaning services from the Second Respondent. The contention that the contract was for "clean premises" is not reflected in the express terms of the licence agreement.

27. Mr Crow, on behalf of the Third Respondent argued that Clause 4.3 has to be read in the context of the agreement as a whole – a proposition I readily accept. In particular, he says, if Clause 3.4's provision that the Third Respondent agreed to ensure the Premises were clean at the end of every Session meant that they had agreed to ensure the premises were clean at the end of every Session, Clause 5.4 would be nugatory. Clause 5.4 provides that the Second Respondent agrees and undertakes:

> "To ensure the Premises are clean, tidy and clear of rubbish prior to the commencement of each Session."

The two clauses do not, however, overlap. The obligation undertaken by the Third Respondent is to ensure the Premises are clean at 8 pm. The obligation undertaken by the Second Respondent is to ensure that they are still clean at 8 am the following morning. The evidence before me was that there were two different cleaning shifts. The Claimant worked the day shift, that is during the "Session". Another cleaner worked after 8 pm. The work done on the second shift was the work that the was the subject of the negotiation described in Paragraph 24 above. The ordinary and natural meaning of the clauses, therefore, is that there are cleaning tasks to be performed during the Session, which are the responsibility of the Third Respondent, and tasks to be performed after the Session, which are the responsibility of the Second.

28. The Claimant says that persons employed by the Third Respondent would ask her to perform particular cleaning tasks. Mr Manoj Jangra, who gave evidence on behalf of the Third Respondent said:

> "All day-to-day cleaning instructions were passed on by myself or the Duty Centre Manager to the Second Respondent's Operations Manager via telephone. It was then the Operations Manager's duty to ensure that the cleaning instructions were given to the cleaning staff."

Mr Jangra was programme manager for the site. He had a number of significant responsibilities and his evidence suggested that he occupied a senior role. He denied in crossexamination that either he or his staff instructed the Claimant to undertake specific cleaning tasks during a shift. It seems to me to be overwhelmingly likely that, in practice, if there was, for instance, a spillage that needed to be dealt with the member of staff affected would simply ask the Claimant to clean up, rather than having to find a senior member of staff who would then communicate with the Operations Manager, who would then pass on the instruction. Complex indirect means of asking for things to be done are rarely honoured in practice by people who are very busy (as the Third Respondent's staff certainly wer)e. However, even if somehow this system did operate precisely as described, it is still, in essence, no more than an indirect method of the Third Respondent allocating tasks for the cleaning staff to perform. As Mr Jangra put it in cross-examination:

> "We passed on to the Jockey Club things we wanted done."

That meant that they passed on what they wanted (and expected) the Claimant to do. Mr Jangra told me that if he was dissatisfied with the Claimant's performance he would contact the Second Respondent, but he did not believe that he had the power to call for her dismissal or the termination of her assignment. Mr Richardson, giving evidence on behalf of the Second Respondent told me that the Second Respondent could ask members of staff not to return if they were dissatisfied with the work that they were doing.

29. Did the Third Respondent make work available to the Claimant? I conclude that it did. Clause 4.3 of the Licence Agreement made the Third Respondent responsible for ensuring that the Premises were clean at the end of the Session. The Third Respondent could have employed someone to meet its obligation but instead agreed to buy in cleaning services from the Second Respondent. The Claimant was supplied to First Respondent under a contract with Indeed flex. She was then supplied by the First Respondent to the Second Respondent. Finally, she was supplied by the Second to the Third Respondent under the Licence Agreement as part of the Building Services provided for.

30. Even if I am wrong about the effect of Clause 4.3, I would still have concluded that the Third Respondent made work available. The Third Respondent needed the Premises to be clean. Again, it could have insisted on making its own arrangements but instead entered into a contract with the Second Respondent which was the end of a chain of contracts through which the Claimant's services were supplied.

31. On either basis, the Third Respondent was the direct beneficiary of the Claimant's work. It also had a degree of control over what specific cleaning tasks she undertook even if that control was exercised by passing a message through a management chain encompassing the

First and Second Respondents rather than issuing instructions directly. In any event, I remind myself, a degree of control or influence over the worker is not a condition of their being a contract worker.

32. Unlike Harrods, the Third Respondent had no legal right to withdraw permission for the Claimant to work on site. Realistically, if the Third Respondent had insisted on her being replaced, it is difficult to imagine the Sedon Respondent insisting that she continue, but no finding to that effect is required since I consider that even without it, the statutory test is met in all the circumstances.

33. The finding is, I consider, consistent with the purpose of the provision. The Claimant was working amongst the Third Respondent's workers and, if her account of events is correct, was discriminated against by them. Those were workers over whom the Third Respondent did have control. Performing cleaning work meant that the Claimant was inevitably working in a workplace operated by the Third Respondent. To echo the language of Lord Carswell, the Third Respondent was "in a position to discriminate against the contract worker".

(d) Was the Fourth Respondent a principal for the purposes of Equality Act 2010, s. 41?

34. The Claimant's case in respect of the Fourth Respondent is that the vaccine centre existed because the Fourth Respondent required that it should. There was also evidence that the Fourth Respondent required that it should be clean. For instance, it required that the Third Respondent should have an Infection Prevention Lead who would have responsibility "at Governing Body level for infection prevention, including cleanliness"[11]. That was because, the Claimant submitted, the Fourth Respondent imposed standards of cleanliness. Meeting those standards required cleaning, which, in turn meant they were creating the need for cleaning work. If they were doing that, they were making work available to the Claimant and benefitting from the work when it was done. The Claimant should be looked upon as being supplied to the Fourth Respondent through a chain of contracts running from Indeed Flex through to the Fourth Respondent.

35. I do not consider that the Fourth Respondent was a principal. I accept that the Fourth Respondent might be said ultimately to benefit from the work done, but they do so only indirectly. Whilst the Third Respondent is ultimately accountable to the Fourth Respondent for the centre, the latter respondent does not operate it. They are not "in a position to discriminate". The Claimant suggested that it was possible that the Fourth Respondent might have staff working at the site, but there was no evidence to suggest that that was so. I do not think it can be said that the Claimant was in any meaningful sense "supplied to" the Fourth Respondent.

Further Particulars of Claim

36. The Claimant is a litigant in person and it is clear that she has struggled at times to articulate her claim with a sufficient precision. At the previous Preliminary Hearing, Mr Crow, counsel

[11] This is taken from the NHS Standard Contract 2021/22 General Conditions.

for the Third Respondent, put a great deal of effort in clarifying the claims by drawing up a list of allegations. Notwithstanding those efforts, considerable uncertainties remain.

37. Having heard from all parties, I am not persuaded that the difficulties arise from any lack of willingness on the part of the Claimant to provide information. One problem is that she cannot always name the individuals that she alleges subjected her to detriments. She had hoped that access to CCTV footage might assist. Putting aside the questionable proportionality of that course of action, no footage is now available.

38. I concluded that rather than strike out the claim (or any part of it) on the basis of inadequate particularisation, the Claimant should have a further and final opportunity to clarify her case. It was equally inappropriate to make any order for a deposit at a point at which there is a realistic prospect that the claim could be properly particularised.

39. I have made a separate order for further particularisation. In the light of my adopting this course of action those strike out and/or deposit order applications which were premise don inadequate particularisation are dismissed.

Recorder S Jones KC
16 January 2024