EMPLOYMENT TRIBUNALS

Claimant: Mrs G Roberts

Respondent: Bridge Law Solicitors Limited

Heard at: Manchester **On:** 15 and 16 April 2024
29 April 2024
(in Chambers, without the parties)

Before: Employment Judge Cookson

REPRESENTATION:

Claimant: Mr Williams of Counsel
Respondent: Mr Redpath of Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant was, at the relevant time, a worker for the purposes of the Employment Rights Act 1995 and the Working Time Regulations 1998.

2. The claimant has conceded that she was not an employee for the purposes of the Employment Rights Act 1996.

REASONS

Introduction

1. These reasons explain why the Employment Tribunal determined its judgment on the preliminary issue of status.

2. The claimant was engaged as a consultant litigation solicitor by the respondent from 4 May 2021 to 29 August 2023. Early conciliation was undertaken between 31 August 2023 and 12 October 2023, and the claim was submitted on 22 October 2023.

3. The preliminary hearing in this case was to determine the claimant's status during the time that she provided services to the respondent. The claimant was engaged purportedly as a self-employed consultant. There was a written consultancy agreement in place throughout the relevant period, although there is a dispute between the parties in terms of the significance of changes in how that agreement was put into effect.

4. On 15 February 2024 Employment Judge Holmes directed that the final hearing in this case be converted to a preliminary hearing to determine the claimant's employment status.

Evidence Considered

5. In reaching my judgment I have considered:

(1) An agreed bundle of documents prepared by the respondent which runs to some 1072 pages (although a significant number were not referred to at all in the course of the hearing) and a supplemental bundle of documents which the parties did not refer to at all;

(2) Evidence in witness statements and given orally for the claimant;

(3) Evidence in witness statements and given orally for the respondent by Claire Stewart (solicitor and notary public), Zoe Bancroft (solicitor) and Nicola Sharpe (solicitor);

(4) Respondent's skeleton argument presented at the beginning of the case;

(5) Closing submissions, both written and oral from counsel.

The Law

6. Regulation 2 of the Working Time Regulations 1998 Regulations and section 230 of the Employment Rights Act 1996 provide as follows:

> "'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 client or customer of any profession or business undertaking carried on by the individual;
>
> and any reference to a worker's contract shall be construed accordingly."

7. There is voluminous case law, including at the highest level, dealing with what subsection b (often simply referred to as "Limb B") means in practice. The policy reason for the protection being given was summarised in **Byrne Bros (Formwork)**

Ltd v Baird [2002] ICR 667 (approved in **Bates van Winkelhof v Clyde & Co LLP and another [2014] 1 WLR 2047**) as:

> "…to extend protection to workers who are, substantively and economically, in the same position [as employees who are in a subordinate and dependent position vis a vie their employers…The essence of the intended distinction…[is] between…workers whose degree of dependence is essentially the same as that of employees and…contractors who have sufficiently arms length and independent positions to be treated as…able to look after themselves…"

8. In the **Bates** case Lady Hale reminded Employment Tribunals that there is no substitute for applying the words of the statute. There are three parts to the statutory definition.

9. First, the contract. In the present case there was an express written contract – which in essence the respondent says properly recorded the terms of the agreement reached, and the claimant says did not.

10. The correct approach to resolving that disagreement, in the context of contracts for work and services, was set out by the Supreme Court in **Autoclenz Ltd v Belcher & Others [2011] ICR 1157** with subsequent commentary being provided by the Court of Appeal in **Uber BV v Aslam [2019] ICR 85**, which can be summarised as follows:

(1) The essential question is what were the true terms of the agreement at the time it was concluded;

(2) Answering that question will require an examination of all of the relevant evidence, including the written terms, and a focus on the reality of the situation;

(3) Tribunals must be 'realistic and worldly wise' taking into account the relative bargaining power of the parties and recognising that there may be several reasons why written terms do not accurately reflect what the parties actually agreed and/or the reality of the relationship.

11. However, if written terms do genuinely reflect what might reasonably have been expected to occur, the fact that rights conferred have not actually been exercised will not render the right meaningless. Further, Tribunals do not have a free hand to disregard written contractual terms consistent with how the parties worked in practice but which it regards as unfairly disadvantageous and which might not have been agreed if the parties had been in an equal bargaining position.

12. In terms of this case, the respondent drew my attention to the decision of ***Plastic Omnium Automotive v Horton*** [2023] EAT 85, in which Her Honour Judge Katherine Tucker reminded tribunals of the importance of the consideration of whether the written agreement reflected the true agreement between the parties. In that case the judge had found that an agreement between the respondent and intermediary companies rather than Mr Horton reflected the true agreement between the parties but had nevertheless found that Mr Horton was a worker. That was an error and the judge had failed to consider which individuals or legal entities were parties to the relevant contract. Having found that the true agreement was the agreement between the

service companies and the respondent the judge that should have determined that Mr Horton was not a worker.

13. HHJ Tucker highlighted the helpfulness of adopting a structured analysis and structured application of the legal principles set out on section 230 of the ERA and quoted from the following passage of HHJ Taylor's decision in **Sejpal v Rodericks Dental Ltd** [2022] EAT 91

> *"10. Accordingly, for an individual (A) to be a worker for another (B) pursuant to section 230(3)(b) ERA:*
>
> > *A must have entered into or work under a contract (or possibly, in limited circumstances … some similar agreement) with B; and*
> >
> > *A must agree to personally perform some work for B.*
>
> *11. However, A is excluded from being a worker if:*
>
> *a. A carries on a profession or business undertaking; and*
>
> *b. B is client or customer of A's by virtue of the contract*.

14. In other words, as the decision in **Plastic Omnium Automotive** rather starkly demonstrates, if a structured approach is taken to answering those questions, if the answer to the first issue - is there a contract between the claimant and the respondent is "no", that is the end of the matter.

15. The second requirement of Limb B is an undertaking by the individual to do work or perform services personally. In **Bates**, Lady Hale discussed the various ways the EAT have attempted to capture the essential distinction between personal performance and otherwise by reference to different concepts – integration, subordination, dominant purpose and so on, and emphasised that there is not a single key to unlock the words of the statute in every case and there is no magic test other than the words of the statute themselves. The case of **Pimlico Plumbers Limited v Smith [2017] ICR 657** and **[2018] ICR 1511** in the Court of Appeal and Supreme Court are also useful to understand how the issue of personal service is to be understood.

16. In the Court of Appeal in **Pimlico**, Sir Terence Etherton MR summarised the applicable principles as to the requirement for personal performance, having identified that the issue of personal performance turns entirely on the contractual terms. The first principle he identified was that an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally. Second, a conditional right to substitute may or may not be inconsistent with personal performance, depending upon the conditionality. He identified, by way of example, that a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work will, subject to any exceptional facts, be inconsistent with personal performance.

17. The Supreme Court upheld the Court of Appeal judgment in **Pimlico Plumbers** without specifically commenting on those principles identified by Sir Terence Etherton. However, in discussing where the boundaries lie between the right to substitute and

personal performance, Lord Wilson concluded that the question becomes whether the right to substitute was inconsistent with an obligation of personal performance. In the context of the facts of the case of **Pimlico Plumbers**, where there was no express right to appoint a substitute in the relevant contract (although there was in practice a limited, fettered facility to substitute by another Pimlico Plumber operative), Lord Wilson confirmed that the sole test remains the obligation of personal performance, but said that there are cases where it can be helpful to assess the right to substitute:

> *"By reference to whether the dominant feature of the contract remained personal performance",*

And:

> *"The Tribunal was clearly entitled to hold…that the dominant feature of [the] contracts…was an obligation of personal performance. To the extent that his facility to appoint a substitute was the product of a contractual right, the limitation of it was significant: the substitute had to come from the ranks of Pimlico operatives…It was the converse of the situation in which the other party is uninterested in the identity of the substitute, provided only that the work gets done."*

18. The third part of Limb B concerns the status of the party from whom the work is done or services are performed. Are they, by virtue of the contract, a client or customer of any profession or business undertaking of the individual? There is no statutory definition of the term "client" or "customer". It is clear from case law, and as reiterated by the Supreme Court in **Pimlico Plumbers**, that the answer lies in an analysis of all of the relevant factors of the case which can include control, responsibility for the provision of equipment, financial risk/opportunity for reward, how the individual describes and organises themselves, if they are free to do and market their services to the world, whether they are paid when not working, subordination, freedom to reject offers of work and integration.

19. Finally, if an individual is found to be a worker, the Tribunal must consider whether this was in the course of an overarching relationship or limited to specific engagements.

Findings of Fact

20. I have made my findings of fact in this case on the basis of the material before me taking into account contemporaneous documents where they exist. I have resolved conflicts of evidence on the balance of probabilities and based on my assessment of the credibility of witnesses. I have not made findings of fact about every matter of contested evidence which was raised, but only those which I considered to be relevant and necessary for me to determine the legal issues.

<u>How the claimant came to be engaged</u>

21. The claimant has been a qualified solicitor since 2000, but she and her husband had run their own property businesses in France for a number of years and she had not worked in legal practice for some 15 years when she contracted with the respondent. In 2021 the claimant had decided to seek a return to legal practice,

although she was unsure whether any firms would be willing to engage her and did not hold a practicing certificate.

22. On 1 March 2021 the claimant responded to a job advert on social media for a 1-6 year qualified solicitor position to work for the respondent at its Marple Bridge office which would suit her in terms of location because it was close to her home and seemed to work the possibility of working hours which would suit her family circumstances.

23. On 3 March 2021 the claimant met with Helen Humphrey-Taylor at the respondent's offices. Ms Humphrey-Taylor suggested the claimant might be interested in a role based on payment for results which might suit the claimant working on a part-time basis.

24. The same day the claimant emailed Ms Humphrey-Taylor with an outline of what her ideal position would be, this included that the claimant would need to work alongside a solicitor at least for the rest of 2021, and that she was looking for a maximum of 15 hours a week increasing to 30 hours a week in 2022.

25. On 8 March 2021 the claimant had a "Teams" interview with Ms Stewart, who gave evidence to me, and who is the Managing Director of the respondent.

26. There was a dispute before me about whether there was a discussion at that interview about a commitment to minimum hours. The claimant's evidence is that she was told she would be expected to work around 20 hours a week. Ms Stewart was adamant that there had been no discussion about that. The claimant is equally adamant that there was such a discussion because it was more than she wanted to do but she felt herself in a difficult negotiating position. I accept that it is more likely than not that at some point in her discussions with the respondent, perhaps with Ms Humphrey-Taylor rather than Ms Stewart, the claimant was told that the respondent was looking for someone who could work around 20 hours a week. The fact there is nothing in the contract which followed shortly afterwards strongly suggests this was not discussed as binding commitment on either side, but it was made clear to the claimant that there was an expectation that the claimant would work on a regular basis with the claimant offering significant availability, even if the claimant would have flexibility to refuse work if she wished.

27. The claimant expressed some concerns at this negotiation stage about working without supervision after so long out of the legal profession. There is no dispute that the claimant was told that she would work under the respondent firm's "umbrella", that she would work on files on the respondent's behalf, that her work would be supervised before being sent out, and the claimant would be covered by the respondent's insurance.

28. The claimant was unable to start until her practicing certificate had been reinstated. The claimant took steps to establish whether she would be permitted to work in the way suggested by the respondent, and it was not disputed that the claimant was told by the Solicitors Regulation Authority that she could not work as a sole practitioner or run her own office, but she could work for the respondent as a consultant because her work would be supervised.

<u>Terms of the agreement</u>

29. At the outset of the relationship the claimant entered into a written consultancy agreement. The agreement provided to the claimant was based on a "PLC" precedent which Ms Stewart had used for another consultant, Ms Sharpe. The agreement contained the following key terms:

a. At clause 11 the claimant expressly agreed that she was not an employee or a worker and provided an indemnity to the respondent in the event that she asserted any such rights.

b. There was no reference to hours of work or a minimum commitment of time. The agreement at clause 2.1 says that the claimant will *"use [your] best endeavours to promote the interests of the respondent and, unless prevented by ill health or accident, devote a proportionate amount of time in each calendar month to enable [you] to carry out the following services for the client (a) acting as a consultant litigation law solicitor.*" If the claimant was unable to provide services she was obliged to notify a director of the respondent as soon as reasonably practicable (clause 2.2).

c. The agreement provided at clause 3 that by way of fees and expenses, the respondent would pay the claimant a fee of 50% of profit costs for work introduced by the client and 70% of profit costs for work introduced by the claimant, although this was later renegotiated by the claimant in September 2021 to give her a more favourable profit share for the respondent introduced client work after she raised concerns about her levels of earnings based on the amount of fees she was achieving.

d. Clause 3 also provides that the claimant was only able to invoice her fees once monies had been received from the respondent's client. She would bear her own expenses.

e. The claimant was covered by the respondent's insurance but only in respect of work that she undertook on behalf of the respondent (clause 8).

f. There was a provision in the agreement in relation to other activities which states at clause 4:

"You may be engaged, employed or concerned in any other business, trade, professional or other activity which does not place you in a conflict of interest with the client. However, you may not be involved in any capacity with a business which does or could compete with the business of the client without the prior written consent of a director of the client."

30. The agreement is silent on substitution. Ms Stewart's evidence was that she wanted to shorten the agreement so deleted from the draft agreement a clause give the claimant the right the right to offer a substitute. The agreement also does not expressly provide a requirement for the claimant to take work if it is offered, nor indeed for her to be able to turn down work if she wishes.

31. Significance reliance was placed by the respondent on the fact that the claimant was engaged on the same sort of contract as Ms Sharpe. However Ms Sharpe's situation is quite different from the claimant. Ms Sharpe is an established and experienced employment solicitor. She is an employee of the Royal College of Nursing for whom she works part-time. When she is not working as their employee, she provides employment law services to another law firm on a consultancy basis and has done so for some time. It was after that agreement was put into place that she entered into a similar arrangement to provide services to the respondent. It was her evidence that her time commitment to work for the respondent is perhaps one day a fortnight. None of Ms Sharpe's work is supervised and she is the only employment lawyer. She agreed in cross examination that she is active on social media in professional terms to promote herself to the outside world.

The agreement in practice

32. Shortly after the agreement was signed the claimant agreed with the respondent that her services would be invoiced through a dormant company she and her husband had set up earlier for other purposes. The name of that company was changed to Coach & Legal Ltd ("C & L"). The claimant suggested in her witness statement she did this for insurance purposes although I found her evidence about that somewhat hard to follow. What is clear is that this agreed by the respondent, but no new contract was prepared between the respondent and C&L. All invoices submitted by the claimant were presented as invoices from C&L and it is not suggested that C&L has been used to provide the services of any other person or to any other firm than the respondent.

33. It was the claimant's case that when she first started, she would work in the office on most Tuesdays and Thursdays. The respondent suggested that the claimant rarely came into the office, but I preferred the claimant's evidence that she came into the respondent's offices, at least at first, and frequently worked from a desk in their Marple Bridge office, although she also sometimes worked from home, partly for convenience and on occasion to work quietly away from the noise of other people dictating and being on the phone. The claimant's evidence about this was clear and specific. There appears to be no dispute between the parties that over time the claimant worked more from home particularly after a period of ill health in November 2022. By the end of the relationship in 2023 she rarely, if ever, went into the office.

34. The claimant had a business card which described her as a consultant litigation solicitor, and she was described in the same way on the respondent's website and in a press release. She was assigned a respondent email address using her initials.

35. The respondent describes the claimant as providing her own equipment, and that is true in the sense that she used her own laptop computer, but she was given access to the respondent's software system to work on files and used the respondent's equipment when she was in the office. She was given some space in a cabinet in the Marple Bridge office for her files. When she did come into the respondent's offices, she worked at a desk with an office computer. The respondent described the desk used by the claimant as being unassigned, but I accept the claimant's evidence that she left various personal belongings there, including pictures of her son, and that she would use the same desk whenever she was in the office. I accept that the claimant

viewed this as “her desk” and that it consistent with the terms of emails sent to the claimant by colleagues referred to in her witness statement. The claimant was provided with a key to the office and an alarm code. The claimant bore the cost of her practising certificate.

36. It is common ground that the claimant did not generally meet clients at the Marple Bridge office but the respondent itself points to the fact that the reason was those clients were not local so I find no significance in that. The claimant would meet with individuals who “came in off the street” – for example, if they needed to produce a sworn document witnessed by a solicitor.

37. In terms of work, claimant’s evidence was that she worked often alongside Ms Humphrey Taylor especially at first. She contacted clients directly and worked both on Ms Humphrey Taylor’s files and was given her own caseload. Ms Stewart disputed that the claimant worked closely with Ms Humphrey-Taylor because she said the two women did not get on. I did not hear evidence from Ms Humphrey-Taylor. The claimant concedes that she ran most of her work with, in her words, minimum direction, but she was sometimes told to amend her work, was required to use “house style” and was given situations on providing billing information.

38. I have taken into account the claimant's evidence that there were documents which she wanted to include in the bundle which the respondent declined to disclose showing where the claimant had worked on files with Ms Humphrey-Taylor. Whilst I can see there may be some confidentially issues with disclosure, the respondent offered no evidence significantly rebutting the claimant’s evidence about this except to say she was wrong. The claimant gave specific examples of files and cases on which she had worked closely and under the supervision of Ms Humphrey-Taylor. I am mindful that in order to ensure the SRA’s requirements were met the respondent must have been actively supervising the claimant and presumably this was done on some files by Ms Humphrey-Taylor. I also accept the claimant's evidence that although she worked on some matters alone, on others she was working as an integrated part of the respondent’s team. That is consistent with evidence in the claimant’s witness statement about situations where the claimant was upset about how much of her time was being billed compared to other fee-earners. If the claimant was working entirely alone on her own matters like Ms Sharpe that issue would not arise. The client care letters I was taken to suggest that for clients of the firm no obvious distinction was drawn between the claimant and the employed solicitors and other fee-earners. The claimant was presented simply as a member of the litigation team who might work on their files. C&L is not referred to.

39. The claimant’s evidence was that her work could be described as being 40% on files where she was the only fee earner, 30% on files with various fee earners working on them and 20% was work taken over from another fee earner as needed, with the balance as non-chargeable business development work. Although that might be rather broad-brush, I accept her evidence about that breakdown.

40. In terms of billing the claimant was in the hands of the respondent. The respondent decided how much clients would be charged, invoice them and then the claimant would be told how much she could invoice as her share of profit costs. This

meant the respondent, not the claimant determined what her fees would be on any matter and when she could submit her invoices.

41. In terms of her flexibility and controlling her hours, the claimant accepted that she could and did turn down work, particularly because of some health issues although she said in practical terms it was similar to the right of salaried solicitors to say, "I'm too busy" and "I don't have any more capacity to take on new work". This only changed in the later stage of the relationship when it seems that the parties' relationship broke down in large part for reasons connected with a particular client and the claimant felt that she was not being properly paid for work done on that file. The claimant refused to do any more work on that matter. I accept the claimant's evidence that there is no evidence of the claimant frequently or regularly refusing work she was offered except when she was ill and as the relationship broke down.

42. The claimant did not attend internal meetings such as marketing meetings held with other members of the team because the respondent would not pay her to attend those meetings.

43. The claimant could request secretary or paralegal support from the respondent. There is no suggestion that she would be charged for any support she needed but it seems she rarely did request support in any event.

44. The claimant undertook a training course with the Association of Contentious Trusts and Probation Specialists at her own expense. The claimant told me she felt that she had been encouraged to do that by Ms Stewart and that it would improve her prospects with the firm, but I accept that she received no guarantees in relation to future work if she did that course.

45. On 27 February 2023 the claimant informed Ms Stewart that her husband would take over accounting on C&L and that he would raise and send invoices in future. The respondent points to that as the claimant providing a substitute for part of the services. The claimant's answer when that point was put to her in cross examination was that she found the invoicing quite difficult and had asked her husband to take that over because she was making mistakes. The claimant suggested in her evidence that she had agreed with this respondent, but the claimant had not asked Ms Stewart for permission as she seemed to imply. She told the respondent that her husband would be doing this on her behalf although her email is perhaps slightly tentative in that she says, "in future, he will be raising and sending my invoices and I hope that's ok".

46. When the claimant eventually terminated the agreement, she did so on C&L headed letterhead.

Submissions

47. I received detailed and helpful submissions from the parties. I do not seek to do either any disservice in not seeking to summarise those here. Instead I have highlighted the most significant arguments in the discussion below.

48. In essence Mr Redpath says that the contract in this case is properly defined as an agreement between the respondent and Coach & Legal. In the stark terms of **Plastic Omnium Automotive** he argues that should be the end of the matter. He also

argues that the involvement of the claimant's husband in billing and invoicing shows this was not a relationship based on personal service. Mr Williams argues that this is case where the reality of the relationship was clearly one of personal service and the invoicing issue was a trivial matter.

Discussion and conclusions

49. I had considerable evidence before about the ebbs and flows of the relationship between the parties and in essence the claimant's evidence appears to cover the entirety of the evidence of the relationship in this case from inception to termination and the reasons for that. To some extent Ms Stewart does the same thing but I have reminded myself that this is a preliminary hearing about status. I am not concerned with how this relationship came to end but what the parties' intention was when the relationship began, ie what were the "the true terms of the agreement at the time it was concluded", although that may include evidence of the reality of the relationship.

50. Applying the approach to the agreement in this case as provided in **Autoclenz**, I start with the express written agreement which is a personal agreement between the claimant and Bridge Law Solicitors Limited.

51. I understand Mr Redpath's argument to be that because it was agreed that the claimant would invoice her services through Coach & Legal Ltd (C&L) I must read the agreement as if it had been expressly varied to be a legal agreement between those two entities. I do not accept that proposition. I prefer Mr William's submissions about that. Bridge Law entered into an agreement with a particular solicitor, the claimant, for the claimant to perform work to enable the respondent to provide legal services to its clients.

52. It is not in dispute that invoicing for the claimant's time was provided though the C&L but it is significant in my view that the respondent did not require C&L to enter into an alternative written agreement to reflect that it now considered that it was contracting with a different legal entity. It is surprising to me that two experienced solicitors should apparently have given so little thought to such a basic legal question as "what are the legal parties to this contract" and whether the submission of invoices in the name of different legal person was a fundamental change. That is not, as appeared to be suggested by both the claimant and Ms Stewart, some specialist nuance of employment law they might not be expected to recognise. It is a fundamental and very basic question of contract law. However the evidence of both Ms Stewart and the claimant suggested that they regarded it as a matter of only administrative or perhaps accounting significance. In light of that, I accept Mr Williams' argument that despite the professional background of the claimant and Ms Stewart, the evidence suggests that there was no intention by the parties to vary the written agreement to a third party (or indeed to novate it to C&L). If the intention had been to move from personal contract with the claimant to one to a third-party company making the claimant available to the respondent, it seems implausible to me that that the respondent would not have insisted that the agreement should be re-drawn or expressly varied to cover the risks and implications of that.

53. Applying the first step in HHJ Taylor's approach set out in **Sejpal** I find that the claimant, A, had entered to a contract with B the respondent. Accordingly the next question is whether A has agreed to personally perform some work for B.

54. It is suggested to me that the I should find the parties did not intend this to be contract for personal service because that is not expressly provided for in the written agreement and there is no bar on substitution. I find that a somewhat curious submission. This respondent entered into a contract with a particular individual, based on her skills and experience for her to make her skills available to its clients The whole tenure of the agreement is expressed in personal terms. The claimant is expected to tell the respondent if she is unwell and to spend a proportionate amount of time each month providing the services. I agree with Mr Williams that the relationship seems to be based entirely on an assumption of personal service. There is nothing to suggest that the parties intended anything else. If the parties had intended that the claimant could offer a substitute given the regulatory environment and the need to make the respondent's insurance cover presumably additionally restrictions would have been required, for example to ensure that only an appropriately qualified substitute would be allowed. I conclude that it never crossed the parties' mind that someone else might undertake the provision of these services and Ms Stewart's decision to delete the substitution clause from the template she used was consistent with it.

55. The respondent also attaches significance to the fact that during 2023 the claimant's husband began preparing invoices for her. The claimant's evidence was that her husband stepped in because she was struggling with the invoicing – in other words it was not something which the parties had anticipated when the agreement was entered into and in any event I prefer Mr Williams' submissions to those of Mr Redpath. The preparation of the invoices, which was required by the somewhat complex fee arrangements put in place was clearly ancillary to the main purpose of the work – the delivery of legal services to the respondents' clients, although of course an important and essential elements of the contract for both parties.

56. My primary finding is that this was a contract for personal services and there was no right of substitution, but if I am wrong about that and Mr Redpath is right that what the claimant's husband did in 2023 showed that this was a contract which might allow some substitution, applying the rationale of Lord Wilson in **Pimlico Plumbers**, I am satisfied that that the dominant feature of this contract remained personal performance. That was what had been intended at the outset and that was what continued throughout the relationship between the claimant and the respondent, notwithstanding that the claimant had found that she needed some assistance meeting the respondent's invoicing requirements.

57. The final question is then whether the claimant is excluded from being a worker because she was carrying on a profession or business undertaking or if the respondent was a client or customer of the claimant by virtue of the contract.

58. The respondent has relied in part on the position of Ms Sharpe who describes herself as a self-employed consultant in her relationship with the respondent as being consistent with the claimant being in the same position. However I preferred the arguments of Mr Williams that what is more striking is the differences between the claimant and Ms Sharpe. Ms Sharpe is an employee of another organisation who is allowed to offer her services to other organisations and does so to more one firm. She does this on a rather ad hoc basis, devoting around on average a day a fortnight to services to the respondent's firm and does so on an individual basis – there are no

other employment lawyers at the firm, she works on the files herself without supervision and she actively markets herself to the outside world.

59. The comparison with the claimant is illuminating. The claimant worked for the respondent in a way which is much more similar to its employed solicitors. She had more freedom to decide if she wanted to go into the office for example and was not required to go to team meetings, but the claimant worked under the supervision of the respondent's more senior lawyers and compared to Ms Sharpes' one day a fortnight the claimant worked from the outset for the respondent for two or three days a week. She had what a desk where she kept some personal possessions and which colleagues referred to as her desk and a space in the office cabinet for her files. Unlike Ms Sharpe the claimant did not market herself to the outside world and indeed was not allowed to offer her services on a freelance or sole practitioner basis. I heard conflicting evidence from the claimant and the respondent about the extent to which the claimant worked as part of a client team but for the reasons I have explained above I have accepted that the claimant did work as an integrated member of the respondent's litigation team even if she also worked on her own files.

60. Turning to the final part of the "Limb B" definition I conclude from the facts that the claimant was not carrying on a business or profession on her account nor was the respondent her client or customer. The claimant was working for the respondent's clients as part of its law firm. It is suggested that the risk the claimant took in terms of fees – she had no guaranteed salary or hourly rate, shows that she was business on her account, but it was the respondent that controlled what the claimant earned. The respondent decided what the client receiving the legal advice and services was charged and determined in turn what claimant could bill and when. The claimant had no independent right to bill for her time or submit an invoice because she considered it an appropriate time to do so. The claimant had other interests, including, but not limited to, the property company which she and her husband were in the process of winding up, and in writing a book, but she did not work as an employed solicitor for any other firm, nor did she provide her services as a solicitor to any other firm as Mr Sharpe did and she was restricted in being able to offer legal services to other clients by the terms of clause 4 in the written agreement. The claimant had no other insurance arrangements to enable her to provide legal services to any other firm or for other clients, and from regulatory perspective she was not permitted to work as a sole practitioner. There was no evidence of her independently marketing her services or developing a wider professional reputation as Ms Sharpe was doing.

61. Whilst I recognise that two independent businesses contracting with each other may be very unequal in size, weighing the evidence before me I conclude that this claimant was not carrying out a professional law business of which the respondent was a client, rather the claimant worked and was integrated into the work the respondent undertook for its clients as a legal practice.

62. Although it does not appear to an issue in dispute, for completeness I also find that the claimant had an overarching relationship with the respondent. Although work was assigned to her on a file by file and client basis, there is no suggestion that there were any significant periods of time when she undertook no activities, and in essence there appears to have been an overlap between files so that although the amount of work the claimant did may have varied each month, as is always the case with

contentious work, at any one time it appears the claimant would have been undertaking at least some work for the respondent. It was not suggested to me that there were clear and distinct periods of service without an overarching relationship.

63. In conclusion I find this was a relationship which would best be described as a flexible relationship, clearly lacking the key elements of an employment relationship but nevertheless something more than an ad hoc assignment to assignment series of engagements. In short, the claimant was a worker.

Employment Judge Cookson

Date: 16 May 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

Date: 29 May 2024

FOR THE TRIBUNAL OFFICE

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