EMPLOYMENT TRIBUNALS

First Claimant: **Shivani Tandon ('C1')**

Second Claimant: **Kiran Seghal ('C2')**

Third Claimant: **Anita Handa ('C3')**

Respondent: **Station Hotel Newcastle Limited ('SHNL')**

Heard at: **Newcastle Employment Tribunal**

On: **25, 26, 27 March and 17 April 2024**

Before: **Employment Judge Sweeney**

Representation:

For the First and Second Claimants: Mark Stephens, counsel
For the Third Claimant, Richard O'Dair, counsel
For the Respondent: Thomas Cordrey, counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is as follows:

1. **The First and Third Claimants were never employees or workers within the meaning of section 230 Employment Rights Act 1996 and section 83 Equality Act 2010.**

2. **The Second Claimant was not an employee or a worker within the meaning of those statutes at the time of the matters complained of in these proceedings.**

3. **The claims of all three Claimants are dismissed.**

REASONS

The Claimants' claims

1. The rights claimed in these cases by all three claimants are conferred by various legislation on 'employees' and 'workers', according to the right asserted. Under the Employment Rights Act 1996 ('**ERA**'), the governing provision is section 230(3). Under the Equality Act 2010 ('**EqA**'), it is section 83.

2. This preliminary hearing was listed to determine the status of the Claimants. In particular, were they employees, employed under a contract of employment or were they 'workers', employed under a worker's contract?

Documents

3. There was a substantial bundle of documents of just short of 1900 pages.

The issues

4. The issues were as set out by Judge Loy in his case management orders [**page 154**].

Witness evidence

5. Sworn evidence was given by sixteen witnesses: nine on behalf of (and including) the Claimants and seven on behalf of the Respondent.

6. I did not have the benefit of hearing evidence from either **Arvan** or **Aran Handa** in a case where they might reasonably be expected to have valuable evidence to give. They were conspicuous by their absence.

Findings of fact

The family connections

7. In the 1960s, Roshan Lal Handa ('**Roshan'**) established a chain of hotels. To avoid confusion, I shall refer to him and all others with the surname of **Handa** by their first names. **Roshan** had two sons, **Aran** and **Arvan**. In 1985, the Respondent company, 'The Station Hotel (Newcastle) Limited' ('**SHNL**') was albeit under a different name. **Roshan, Aran** and **Arvan** were the sole shareholders of **SHNL**.

8. **Arvan** is married to Anita Handa ('**Anita'**). **Aran** is married to Renu Handa ('**Renu'**).

9. **Aran** and **Renu** have two sons, **Naveen** and **Aneil** and one daughter, Komal Talwar – Talwar being her married name ('**Komal**'). **Naveen** is married to Vineet Handa ('**Vineet**')

10. **Arvan** and **Anita** have one son, **Neeraj** and one daughter, Kiran Seghal – Seghal being her married name ('**Kiran'**). **Neeraj** is married to **Shivani** Tandon ('**Shivani**').

11. The three Claimants in this case are:

- **Anita**: married to **Arvan**
- **Kiran**: daughter to **Arvan**
- **Shivani**: daughter-in-law to **Arvan**

12. I have set out the family connections because it is vital to understanding the factual matrix against which this dispute rages. I am sorry to say that the **Handa** family has become riven with factional fighting. The factions are obvious: there is **Aran's** side of the family and there is **Arvan's** side of the family. What has caused this discord is immaterial to the issues I was to decide in this public preliminary hearing. Other battles are being fought both in this tribunal and beyond. These proceedings are but one part of much wider, substantial litigation.

13. In my judgement, this factional war partly drove some of the positions that were adopted in the hearing before me. Although the cause of the family rift is immaterial to the issues before me all counsel submitted that the fact of the rift explains some of the assertions and counter-assertions regarding employee/worker status. Counsel for the Claimants pulled no punches in putting to the Respondent's witnesses that they were lying and deliberately misleading the tribunal by swearing to witness statements that were carefully worded by lawyers. In their closing submissions, they invited me to draw adverse inferences. The Claimants contended through their counsel that the Respondent's witnesses were merely defending a state of affairs that they knew to be false because of the wider factional battles raging between **Aran** and **Arvan**. Although the same might have been said of the Claimants - that is, that they were advancing arguments that they knew to be false because of the same factional war, Mr Cordrey was more restrained in his

cross-examination of the Claimants. However, he made his position clear that the Respondent disputed their assertions to be working for **SHNL** to the extent that they say they did and disputed their assertions that any such work that they did was pursuant to or under any kind of a contract. I would observe at this juncture that my overall determination of the issues before me was not heavily dependent on my assessment of the general credibility of the witnesses on either side. Where I have had to decide on the objective truthfulness or 'reality' of a stated position I have done so.

SHNL

14. **SHNL** is a substantial organisation. It is a multi-million-pound business with a portfolio of hotels, bars and restaurants in the UK, trading as part of 'The Cairn Group' in England and Scotland. Some of the hotels are run as a franchise under other brand names (such as Crowne Plaza and Holiday Inn) and some are operated independently under the Cairn Group brand.

15. **SHNL** is owned by **Roshan** (30%), **Arvan** (35%) and **Aran** (35%). **SHNL** is not the only company of which **Arvan** and **Aran** are majority shareholders and/or directors. Others include CHG (Newcastle) Limited ('**CHG**'), Solehawk Limited ('**Solehawk**') and Popular Care Limited ('**Popular**'). The latter two companies are, broadly speaking, care home companies, whereas **SHNL** and **CHG** are, broadly speaking, hospitality companies. **SHNL** manages some aspects of **CHG** which outsources to it some back-office functions namely financial management, accounting, IT, HR, payroll and marketing. **SHNL** also provides accounting, IT, HR, payroll and marketing services to **Popular** and **Solehawk**. To the extent that it was suggested or hinted at in these proceedings, I find that there was no such arrangement in place between **SHNL** and any other company for the provision of any services by the Claimants to those other companies.

16. For a period of time up to **2017**, CHG had been structured as a partnership with **Roshan, Aran, Arvan, Renu, Anita** and later including **Neeraj, Naveen** and **Aneil**. This was subject to the terms of a partnership deed. In **2017**, the trade and assets

of the CHG partnership were bought by the company, **CHG**. The former partners became shareholders.

17. Both **Aran** and **Arvan** encouraged members of their family to show an interest in and to take part in the business. The extent to which the Claimants in these proceedings participated is set out below in relation to each individual claimant.

18. **SHNL** is a family-owned business. **Aran, Arvan** and **Roshan** exercised what has been emphatically described to me as 'patriarchal control' over that business. Whilst emphasising the patriarchal nature, Mr O'Dair implored me to avoid giving credence to what he described as sexist assumptions of the Respondent and not to regard the three claimants as merely annexes to their husbands or, as the case may be, their father. Mr O'Dair is right to say this, although I do not accept his description of the Respondent's case. A patriarchy is, of course, an inherently sexist concept. It is clear from the evidence that within the **Handa** family-run business, the men of the family were allowed to and expected to run the business or aspects of it. They were able to and did make decisions without obtaining input from the female members of the family. The female members of the family were expected to learn and understand the business and were permitted to participate to the extent that they chose but without commitment. However, they benefited from the company whether they participated or not. They were not required to do anything they did not wish to and they understood and accepted this. Inherently sexist though a patriarchy may be, it is one to which all three claimants willingly signed up, it being not without benefits.

19. This 'expectation' to learn and understand the business derived solely from being members of the **Handa** family. It has been described by the Claimants as an expectation to 'contribute' to the business. That is a vague expression which does not really assist me in determining what they did day to day or whether they were contractually required to work in return for payment. The witness statements were thin on what day to day tasks the Claimants performed, if any. It was left to me to wade through many emails, referred to in passing in the statements as evidence of the Claimants' involvement or activity within the business.

20. From about **2014**, **SHNL** started to hold an 'annual leadership conference'. These meetings are attended by all general managers and all senior central staff. All **Handa** family members had an open invite to attend whether involved in the business or not and a table was reserved for family members. A good description of the purpose of the conference is given by **IP** in paragraph 11 of his witness statement, which I accept. The senior leadership also held regular business review meetings. In **2020**, smaller Senior Leadership Team ('**SLT**') meetings were established.

Ian Howmans ('IH')

21. **IH** is **SHNL's** Group Property Director. He has been employed in that role since **January 2020**. Leaving aside a gap in service between **2011** and **2015**, he has worked for the Respondent since **2009**, starting as a Project Manager a role he occupied up to **2020**. Among his responsibilities is the management of hotel refurbishment projects. He is a member of the Senior Leadership Team ('**SLT**'). Over the years he has worked closely with **Aran** and **Arvan, Aneil, Naveen** and **Neeraj** on various projects. Each project had an appointed 'lead', typically **Aran**, **Aneil** or **Neeraj**. The progress of projects were discussed at project review meetings.

Richard Warren ('RW')

22. **RW** is the Respondent's Chief Financial Officer ('CFO'). He has been employed by the Respondent since **2014**. As CFO, he reports directly to the Board of Directors. He is the chairman of the **SLT**. He is responsible for all corporate and operational finance matters and related legal issues.

Ann Simpson ('AS')

23. **AS** has been employed in the **Handa** family business since **1988**. She started as a waitress in a hotel owned initially by the CHG Partnership and then **CHG**. She worked as a receptionist in the Royal Station Hotel before moving to Head Office in **1991**. She eventually went on to become Group Financial Controller, a role she

has held for approximately 25 years. She reports to **RW**. Of all the witnesses who gave evidence for the Respondent, she is the longest serving and she can claim to know the **Handa** family business as well as anyone. She also knows the **Handa** family members better than many others who gave evidence on the part of the Respondent. Over the years she has attended many social events, including **Kiran's** wedding. She came to understand – and I find accurately - that the 'culture' (by which I find to be the prevailing practice) was that if a **Handa** family member requested something it should be actioned.

Ian Peck ('IP')

24. **IP** has been an Operations Director employed by **SHNL** since **November 2019**. He had operational responsibility for hotels in the south of England until the end of **August 2021**, when he moved to take on the northern region which included Newcastle and Scotland. He spends a lot of time on site (at each hotel) meeting with General Managers and checking the properties. He is very experienced in the hotel industry and is extremely familiar with the roles and responsibilities of those who work in the **SHNL** hotels. It was not unusual for **IP** to see a **Handa** family member at one of the hotels and to receive constructive feedback after they had visited. Nor was it unusual for a family member to ask for and to be provided with a room, or to use services or functions at the hotels either on a complimentary basis or on a reduced rate on their own behalf or on behalf of friends. I accept the account he gives in paragraph 15 of his witness statement.

Appointment of an external chairman

25. Following the retirement of **Roshan** from the business, Paul Williamson ('**PW'**) was appointed non-executive chairman of **SHNL** on **02 July 2021**. He had been a partner in Deloitte LLP where he acted as the Audit Partner for **SHNL** for some fourteen years. Upon his appointment, **PW** set about implementing improvements to governance within **SHNL**. As part of this exercise he instigated the drawing up and execution of service agreements for **Neeraj, Naveen** and **Aneil**. He did not initiate or suggest that contracts be drawn up for the Claimants because he personally did not understand them to be working for **SHNL**.

The Respondent's HR system

26. The Respondent has an automated HR management system known as 'Fourth' and software training system known as 'Flow'. Anyone who is paid through the Respondent's payroll is, or should be, added to these systems. That was the case for each of the Claimants. For employees in general, specific information is retained on Fourth, such as details of job offers, induction, job descriptions, contracts, right to work documentation, records of when holiday, outstanding holidays, absence records, maternity leave. Training records are kept on Flow. No information of this sort existed in the case of the Claimants. One consequence of a name and contract address being added to the systems, was that any generic communications from the Respondent were automatically generated and sent to the individual. The emails referred to in these cases were those automatically generated emails and were about things that applied to everyone, for example changes to the staff handbook [**page 305**, **307, 309**], GDPR [**page 280**], staff surveys [**page 282**]. Other examples are generic correspondence on redundancy consultations and Coronavirus Job Retention Scheme. However, none of the usual documentation that one would associate with workers or employees existed in the case of the Claimants. There was no job offer, no job title, no job description, no written contract, no statement of written particulars, no material relating to induction, holidays, absence, sickness.

P11Ds

27. A P11D is a tax form for recording employment benefits in kind that employees and directors of a company have received in a tax year. In **July 2018**, **Sarah Weston** of Deloitte asked **AS** whether she was in a position to send her the 2017/2018 tax information in connection with her review of the family's 2017/2018 payments on account which were due at the end of that month [**page 259**]. Ms Weston was referring specifically to the forms P60 for the tax year 2017/2018 as well as the P11Ds (if any).

28. **AS** asked the Payroll Manager, Danielle Brown ('**DB')** for this information. **DB** replied on **11 July 2018** that she had P60s for **Naveen, Neeraj** and **Aneil**, adding: *"the girls on payroll. I haven't done any P11Ds? I costed the cars however aran said they weren't company cars so what should I be doing as P11d?*" [**page 259**]. It is clear that both **AS** and **DB** were unsure about whether P11Ds should be issued. **RW** joined the conversation expressing his view "*that all private car use (lease payment and fuel) and the personal use element of the fleet insurance, should be P11D*." [**page 258**].

29. **Arvan** queried whether they could put cars through as a P11D benefit for **Renu** and **Anita** as they were not employees. **RW** responded:

    "Yes – we calculate as HMRC rules state for everyone. For Renu and Anita both are set up on the payroll system but receive no pay. They're not directors of any company and hence if we say that any of their car usage is for the business it's inconsistent and we're likely in contravention if [sic] minimum wage legislation.

    Therefore, it seems sensible to either pay them a salary for last year and only tax some car time as personal or pay them nothing and tax all car time as personal.

    The partnership tax position used to cover this so while this seems like extra tax we're still saving on the past.

    Clearly all solutions have tax consequences however again I suggest we need to be clean on this sort of thing. I will discuss with Julia". [**page 258**].

30. In her evidence, **AS** said that she was unsure if P11Ds were, in fact, ever submitted for **Shivani** and she believed that they were not. Mr Stephens suggested otherwise and took her to various documents including **page 258** and a further email at **page 842**.That was a previous email, on **15 June 2016**, when **AS** had emailed **Neeraj** to say that:

"*After discussion with Aran and Richard this afternoon it has been decided that we will P11D Vinni and Shivani for their cars. Shivani for the Porsche and Vinni for the A Class. This will be done through CHG*." [**page 842**]

31. Although none were produced in evidence and **AS** was unsure of the position, I find that P11Ds were submitted for **Shivani**. P60s were also prepared for each of the Claimants.

Claimants on SHNL's payroll

32. All three Claimants received regular payments through **SHNL's** payroll. Of the three, **Kiran** was on the payroll for the longest period of time, followed by **Shivani** and then **Anita**. All three were put on the pay roll at the request of **Arvan**. Others were placed on the payroll at the request of **Aran**. These 'requests' were in effect directions to the payroll department which never questioned them. The Claimants were not recruited to any role. They were never inducted by the company. They were not provided with any contracts or job descriptions. They had no job titles and were never introduced to any third party as having any role. In addition to monthly pay, company cars and other benefits were provided.

33. The document at **page 1616** of the bundle [also found at **page 264**] listed the salaries of the Claimants and others including **Komal, Renu** and **Vineet** in or around **June 2022** as follows:

- **Kiran** and **Komal's** salary was £53,100.
- **Anita's** and **Renu's** salary was £36,000
- **Shivani's** and **Vineet's** salary was £21,400

34. I am unsure as to the accuracy of the figure of £53,100 or other figures. I say that because (as will be seen in paragraph 141 below) in **July 2020**, **Arvan** had instructed that **Kiran's** salary increase from £43,158 to £58,100 [**page 606**]. Further, the P60s for **2021** and **2022** record payments in each of those years in excess of £60k [**pages 589-590**].

35. Whatever the true figures, under the column headed 'job title', the Claimants were described as 'director'. That was also the case for all other **Handa** family members and Luzvimidna De Oro Pude, who was **Kiran's** nanny. I am satisfied and so find that these 'salaries' bore absolutely no relationship to any work that any of those named above did, either in terms of the demands on the individuals, its importance, commercial value, frequency. **Kiran** and **Komal** were paid substantially more than the others (and, whatever the true amount, precisely the same as each other) because and only because they were daughters of **Arvan** and **Aran** respectively. **Anita** and **Renu** were paid precisely the same as each other (and less than the daughters) because and only because they were wives of **Arvan** and **Aran** respectively. **Shivani** and **Vineet** were paid the least (and precisely the same as each other) because, as daughters-in-law, they were less senior than **Aran** and **Arvan's** wives. The reference to 'director' (on which counsel for the Claimants placed some reliance) was meaningless as demonstrated by the reference to **Kiran's** nanny as a director.

36. As indicated earlier, each of the Claimants had a company car and were provided with other benefits, namely mobile phones, private medical insurance. In the case of **Anita** and **Shivani**, company cars were provided prior to them being entered on the payroll of **SHNL**.

37. The Claimants were placed on the Respondent's payroll simply because they were family members. Of that, I am entirely satisfied. It was then up to each individual whether they wished to involve themselves in the business and, if so, to what extent. Each of the Claimants was happy to accept that arrangement. There was no obligation on them to do anything. There was an 'expectation' on all family members that they should learn and understand the family business but how that was done was not prescribed. Although I set out the individual circumstances of each Claimant separately, it is convenient at this juncture to mention **Shivani's** position. It was expected by **Arvan** and accepted by her that she would be placed on the payroll. In her second witness statement, **Shivani** describes a 'pressure' to work for the family business from the start. There may be a debate to be had as to

whether a traditional Indian culture in itself creates some form of 'pressure' to 'participate' in the business. However, I am looking at matters at the individual level in these particular cases and whether they worked under a contract with the Respondent, applying legal principles. Understandably, **Shivani** speaks of this traditional culture with pride where family members are expected to learn and contribute. However, the issue is whether she and the other claimants were contractually obliged or required to perform any work. Having considered the evidence carefully, I am satisfied and so find that common to all three (save before **2010** in **Kiran's** case) was that they could come and go as they pleased and could do whatever they wanted, when they wanted, which included doing nothing at all and that payments were and would be made regardless of any activity by them.

Proposal to remove the Claimants and others from payroll

38. All three Claimants were removed from the payroll at the same time. It was put to **PW** that he was lying when he said, in paragraph 5 of his witness statement, that he only became aware in about **June 2022** that there were non-working family members on the payroll when he learned of a bonus payment being paid to **Komal**. It was put to him that by dint of having been the company Audit Partner when at Deloitte, he must have known, even before he joined the company, that other **Handa** family members were on the payroll. Mr Stephens relied on item 10 of **PW's** minute of a board meeting in **July 2021** as indicating that **PW** was aware that the Claimants were on the payroll. That entry reads as follows:

"*Paul indicated that the service contracts in respect of Aneil, Naveen and Neeraj were almost complete and that he would circulate to Aran and Arvan for their review but they were not to be shared with the relevant individuals until they were complete and this would be done by the board. In respect of other family members who were included on the payroll then steps would be taken to issue them with contracts of employment in order to be compliant with employment law*." [**page 1525**].

39. **PW** explained this as meaning '*to the extent that'* there were other family members included on payroll, steps would be taken to issue them with contracts of employment to be complaint with employment law.

40. I was strongly urged to reject **PW's** evidence on this and invited to consider it astonishing that he would not have known before **June 2022** that the three Claimants were on the payroll. However, I accept his evidence. **PW** was and is a non-executive chairman. He is not a hands-on executive and cannot automatically be taken to know every detail. I was urged to view the Respondent as akin to a small family-run enterprise and to conclude that **PW** would have known and did in fact know that other family members were on the payroll. However, it is not a small enterprise. It is a substantial organisation owned by a small number of people (thus a family business) but which employs thousands of staff. The material relied on to counter **PW's** evidence that he did not personally know the claimants were on the payroll is item 10 of the board minute of **July 2021** and an assertion that he must have known.

41. I accept that what **PW** meant by the minute was '*to the extent that'* there are other family members on payroll and that it was not an acknowledgement by him that he knew this to be the case. I also reject the notion that as a non-executive chairman he would have known this. He had only joined the company as a non-executive director on **02 July 2021**. There was no suggestion that he had met or that he knew **Shivani, Kiran** or **Anita** by the date of this board minute. Equally, I reject the notion that he would have known that the Claimants were on the payroll from his previous role within Deloitte. There, he led a team of people and it did not follow from this at all that he would personally have known the circumstances of every family individual in the business of a single client. Further, whether he knew or not would not have affected the Respondent's case on employee/worker status in these proceedings. Others, in executive or operational roles knew that the Claimants had been on the payroll: **RW, RA, AS** to name but a few. It was not to the Respondent's advantage for **PW** to maintain a line that he did not know until about **June 2022** if he had in fact known before then. Nor was it to its disadvantage for him to acknowledge that he knew this back in **July 2021**, had he in fact known. Further, **PW**'s evidence was consistent with what he said about a year later in the board

meeting of **05 July 2022**, where he said 'if' there are family members on payroll who do not work they should be taken off (see paragraph 45, below)

42. The contention that **PW** was lying and out to mislead the tribunal was symptomatic of the 'heat' generated in this litigation by the very acrimonious schism in the family. I accepted **PW'**s evidence on this as truthful. Furthermore, and importantly, he had made clear back in **2021** that working family members should be issued with service contracts. He was personally aware of only three working family members: **Neeraj, Naveen** and **Aneil**. No-one had ever said to him that there were other working family members. I was not referred to a single reference in the voluminous bundle of papers prepared for this hearing where anyone refers to **Anita, Kiran** or **Shivani** as working family members since **PW's** arrival (or indeed even prior to that). Not even **Neeraj**, in **July 2021,** when the discussion centred around providing him with a written contract, suggested to anyone that his wife, **Shivani**, or his sister **Kiran**, or his mother **Anita** were working in the business and that they too should be given a written contract. Indeed, when back in his family home, **Neeraj** did not tell **Shivani** that he was to be given a written contract. She did not learn that he had one until after it had been signed and upon so learning did not suggest that she too should be provided with a written contract. I am satisfied that there was nothing that would have led **PW** to believing or knowing that **Shivani** or **Kiran** and **Anita** were working in the business.

43. In an email dated **19 May 2022**, **Arvan** instructed **DB** to *"pay **Neeraj** £35k on his next wage slip – this is what the family has agreed"* [**page 372d**]. On **07 June 2022**, **DB** queried with **AS** and **RW** whether this was to be paid and **AS** confirmed that it was. When she queried where it should be posted in the accounts, whether as gross wages or bonus, **Neeraj** replied to say "*Bonus is fine. I believe the family agreed to a one-off payment for myself and **Komal**, however I was not party to these discussions*." [**page 372C**].

44. **RW** then intervened in this exchange, saying: "*my understanding is that this was not agreed by the Board of SHNL and is not to be paid. I have asked payroll not to pay it in line with that instruction. Similarly, no amount will be paid to Komal*." By now the list of those copied into **RW's** email extended to **PW** [**page 372c**]. Upon

reading **RW's** email, **Neeraj** replied pointing out that the board had not approved payment to **Komal**, who had been paid in the middle of March. As he was not to be paid, **Neeraj** asked for the money paid to her to be repaid. There then followed an exchange of emails regarding stopping payments to **Komal** and recovering the 'bonus' of £40k. It was through this exchange of emails that **PW** came to learn that there were other **Handa** family members being paid through payroll other than **Neeraj, Naveen and Aneil**, all three of whom he understood worked for the company.

Board meeting 05 July 2022

45. Following the situation that had arisen regarding proposed bonus payments to **Neeraj** and **Komal**, the subject of bonus payments generally was then discussed at a board meeting on **05 July 2022**, the minutes of which were in the bundle at **pages 1618 – 1627**. Present at this meeting were **Aran, Neeraj**, **PW** and **Joshua Carr**. The position of persons on payroll who did not work was also discussed. **PW** said that if there are personnel on payroll who do not work, then they should be taken off. **Neeraj** then proposed that the family members on the payroll who do not work for the business should be taken off payroll.

46. It was unanimously agreed that **Aneil, Neeraj** and **Rafeek** would stay on the company's payroll and receive a 3% pay increase but that <u>all other</u> family members listed on the payroll would be moved off the company's payroll and not receive a 3% pay increase [**page 1622**]. This meant the Claimants – and others. **PW** was to speak to Rob in finance regarding this and **Aran** was to organise moving those personnel off the company's payroll. This was unanimously agreed.

47. There was a reference at that board meeting to someone called '**Luzviminda**'. This was a reference to **Luzviminda De Oro Pude.** She is, or at least was at the time, nanny to **Kiran'**s children and her housekeeper. She is listed by **Kiran** in her response to request for information [**page 90]** as being one of her direct reports or an employee of **SHNL** for whose management she was responsible. It seems that **Luzviminda** was one of three nannies who were receiving payments through **SHNL** payroll.

48. The decision made by the Board on **05 July 2022** to move non-working family members off payroll was not actioned because the cracks that had been developing in the family began to widen (as evidenced in the exchange between **pages 631 and 637b)**. In particular, **Aran** and **Arvan** could not agree how non-working family members – with particular reference to the two daughters, **Kiran** and **Komal** - were to be financially looked after. From an examination of the contemporaneous emails, I find that the main concern of **Arvan** and **Aran** was for **Kiran** and **Komal**. Of lesser concern was **Shivani** and **Anita**. I infer the reason for the differing levels of concern was that **Anita** and **Shivani** were both married to members of the **Handa** family. A possible solution which was mooted was to move the Claimants and others from the **SHNL** payroll to **CHG**.

49. In an email dated **05 October 2022**, **PW** emailed **RW** and others, copying **Aran, Neeraj** and **Arvan**. He said:

"The board has previously agreed that the following should be removed from the SHNL payroll:

Kiran Sehgal
Komal Talwar
Renu Handa
Anita Handa
Vineet Kaur Alagh
Shivani Tandon
Lzviminda De Cro Fude [sic]

Can Richard Adams advise if we need to give notice under employment law. I understand that they are being transferred to CHG but the directors of CHG need to confirm." [**page 406**]

50. **Neeraj** responded to this email saying:

"*My understanding from the Minutes is that **Naveen** was to be removed too…"* [**page 406**]

51. On **27 October 2002**, **Neeraj** emailed **PW** regarding **PW's** alleged incompetence. One of his alleged incompetencies was that he had "*failed to follow up on agreed action in regard to the removal of family members and nannies despite it being in the minutes*" [**page 416**]

52. There was a dispute (at least in the hearing before me) as to what 'transferring' them to **CHG** meant.

53. Mr O'Dair, in his closing submissions, commented on the absence of cross-examination of **Neeraj** by Mr Cordrey as regards the board minute of **05 July 2022** or in respect of the email to **PW** regarding his alleged incompetence. Mr O'Dair submitted that, had Mr Cordrey asked questions of **Neeraj**, he would have been afforded an explanation as to what the minute <u>really</u> meant. Mr O'Dair offered a possible explanation in paragraph 33.1 of his written submissions, namely that **Neeraj** 'may' have said that the board proposal was to remove them and <u>transfer</u> their employment. By this, Mr O'Dair was referring to a 'TUPE' transfer. Mr Cordrey submitted that the board minute and **Neeraj's** subsequent email were perfectly clear in their meaning. I agree with Mr Cordrey. In the absence of any acceptable and accepted explanation (such as that given by **PW** when he was cross examined on the meaning of the minute of **July 2021**) the board minute and the email speak for themselves. **Neeraj** comments on the meeting in paragraph 25 of his witness statement. He says that '*it is clear that the intention was to TUPE the employees to **CHG'***.

54. However, that is not at all clear and I do not accept what **Neeraj** says regarding TUPE. The conversation and decision of the board was simply to remove them from **SHNL's** payroll – no more, no less. Following this, in trying to work out how to financially support the relevant individuals, the suggestion of putting them on another company's payroll was mooted. However, there was no suggestion that this was due to any 'service provision change' or transfer of any part of the business. Although counsel for the claimants referred to TUPE, there was no attempt to explain how this was envisaged in practice. It is difficult to see how this in any way supports the contention that the Claimants were contracted employees

or workers of **SHNL**. I could see no legitimate basis for arguing the existence and proposed transfer of any 'economic entity' or part of an undertaking. There was no hint of any contract or service provider change. In my assessment, the casualness of the suggestion to move them from one payroll to another militates against any genuine belief that they were 'employees', suggesting that they are there just to be moved or 'transferred' from payroll to payroll at the patrimonial whim of the controlling shareholders and directors. It cannot fail to escape anyone's attention that all those to be moved – or transferred to **CHG** - have one thing in common, namely that they are all women.

55. I was unable to discern from any evidence that there could be any sensible suggestion of a transfer of an economic entity or part thereof. Nor was this a case of a service provision change. I am entirely satisfied, and so find, that the reference to the removal of family members from the payroll was a reference to those whom **Neeraj, Aran** and **PW** believed to be 'non-working' family members. The unanimous decision was simply to remove them. The consequences had not been considered beyond that. Contrary to what **Neeraj** says, the 'clear' intention was not to transfer them under TUPE to **CHG**. The suggestion that this was to be a 'TUPE' transfer was entirely fanciful. The intention of **Aran** and **Arvan** was, I infer from all the evidence (and in the absence of hearing from them) to ensure that the non-working family members were provided for financially, irrespective of what it took. They were quite willing to contemplate and to give effect to the removal of them from one payroll and the transfer to another. It was, from their perspective, an accounting exercise to get them off one set of books and to look at simply moving them onto another. **PW** appeared untroubled by the suggestion to move them to the payroll of **CHG**. He says that **CHG** was not on his watch, that his responsibility and governance concerns were only for **SHNL**. Whilst that may strictly be the case, it is not to **PW's** credit (or to the credit of anyone else) that they did not counter the suggestion to move non-working family members from one payroll to another.

56. Given the concern to look after the non-working family members financially, consideration was then given to how best to effect their removal. **Richard Adams ('RA')**, the Respondent's HR Director, was asked by **PW** to provide calculations for redundancy payments. He did so on **06 October 2022** [**pages 427 – 428]**.

57. Much was made of an apparent discrepancy between the evidence of **PW** and of **RA** regarding whose idea it was to suggest going down the 'redundancy route'. In the board meeting of **13 October 2022**, it was noted that **PW** described **RA's** preference to go down the redundancy route [**page 411**]. In his evidence, **RA** said he had not been asked to express a view, only to give figures on what redundancy might look like. I find that **RA** did not say either way whether redundancy was the right or wrong way to go but that arising out of a discussion surrounding the possibility that it might be, **PW** genuinely believed that **RA** considered redundancy to be a preferred option. It is more likely than not that **PW** believed this to be what **RA** had been saying because **RA** had expressed a firm concern regarding the position of the three nannies – there were two others in addition to **Luzviminda**. In the end no such payments were made. There was nothing in this point. The figures were purely illustrative of what might have to be paid should that be required.

58. Whatever was to happen to the non-working family members (about whose future arrangements no decision had been reached), it was agreed at the board meeting on **13 October 2022** that the three nannies be given notice [**page 412**]. There was a further board meeting on **10 November 2022**. Those in attendance were, again **Aran, Neeraj, PW** and **Joshua Carr**. There was a further discussion regarding the nannies, in respect of which **Neeraj** and **PW** were in agreement as to treating the service of the nannies as a benefit in kind. **Aran** disagreed [**page 420**].

59. From around this time multiple grievances and disciplinary allegations were raised and addressed. **Neeraj** was dismissed in **April 2023**, the decision having been taken by **PW**. That dismissal is the subject of separate proceedings in the Newcastle Employment Tribunal. As I have mentioned at the outset, there is multiple litigation in the courts and in the employment tribunal and I am not straying anywhere near the facts or issues in those cases.

60. It was not until **21 April 2023** that the Board met to decide on what to do regarding the non-working family members, including the Claimants [**page 432**]. Only **Aran** and **PW** were in attendance as directors of the company. It was agreed that certain

family members were to be removed from payroll and that **RA** would communicate this to them [**page 436**].

61. Consequently, each of the Claimants received a letter in identical terms to that on **pages 547 – 548** (addressed to **Anita** and dated **19 May 2023**).

62. The first two paragraphs read as follows:

"*It has come to the attention of SHNL that you have received payments via the Company's payroll.*

*It is unclear to the Company why such payments have been made as you are not employed by, nor have any contractual relationship, with the Company. These payments appear to have been made in error and I am writing to confirm they will therefore cease with immediate effec*t."

63. The letter was signed by **RA** although he did not draft it. Counsel for the Claimants rightly criticise the wording of this letter. It had not recently come to the attention of **SHNL** that the Claimants had been receiving payments via payroll. This had been known for many years. Further, it was not unclear why such payments had been made. It was perfectly clear. All three Claimants were paid on the say-so of **Arvan** and/or **Aran**. On that basis, it is simply wrong to say that the payments 'appear to have been made in error'. The payments were made knowingly.

64. The Claimants were removed from **SHNL's** payroll from the end of **June 2023**.

COVID-19 TIMELINE

65. On **26 March 2020**, the country entered its first national lockdown as a result of COVID-19. On **23 June 2020**, the Prime Minister announced relaxation of restrictions with further easing of restrictions on **04 July 2020**, including the reopening of bars and restaurants. There was yet further easing of restrictions on **14 August 2020**. However, on **23 September 2020**, the Prime Minister announced new restrictions in England, including a return to working from home and the country entered a second national lockdown on **31 October 2020**. That ended on **02 December 2020.** A third national lockdown in England commenced on **06**

January 2021. It was not until Spring that restrictions again started easing, with many hospitality businesses, including hotels, reopening from **17 May 2021. The** removal of most legal limits on social contact were eventually removed from **19 July 2021**.

Furlough

66. With the onset of COVID, the government set up an unprecedented scheme known as the Coronavirus Job Retention Scheme ('**CJRS'**).

67. All three of the Claimants in this case were paid throughout the national lockdowns and the Respondent claimed in respect of them through the CJRS. Counsel for the Claimants placed a great deal of reliance on this. I must set out some basic (and uncontroversial) factual findings on what have become known as furlough payments. Furlough refers to wages for employees on temporary leave. The government enabled employers to claim for these wages through the **CJRS**.

68. There were different iterations of the **CJRS** and associated guidance as time went on. The first iteration, back on **26 March 2020** stated that: '*if you cannot maintain your current workforce because your operations have been severely affected by coronavirus (COVID-19), you can furlough employees and apply for a grant that covers 80% of their usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and pension contributions*…"

69. The guidance went on to say: "*HMRC will check claims made through the scheme. Payments may be withheld or need to be repaid in full to HRMC if the claim is based on dishonest or inaccurate information or found to be fraudulent*."

70. It continued: "*You can only claim for furloughed employees that were on your PAYE payroll on or before 19 March 2020 and which were notified to HMRC on and RTI submission on or before 19 March 2020…. Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts*."

71. It further provided: “As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE: office holders (including company directors) …. agency workers…. And limb (b) workers”.

72. Given the nature of the industry and the severity of the first national lockdown, a huge proportion of the Respondent’s workforce was unable to work. It employs about 2,500 employees. It became important to consider who was required to work (central office corporate/operations manager). That is different to looking at everyone who was not required to work and assessing or analysing whether they were properly furloughed (which formed part of the cross-examination of **RW** and others**)**. The position that was taken was that everyone who was not required to work was designated furlough. Over 80% of employees were in fact furloughed.

73. One of **RW’s** direct reports, **Rob Cook**, build a spreadsheet model for the purposes of following rules on the HMRC website. This was subject to constant changing. The spreadsheet did not do any analysis of whether the person was an employee, or for that matter a limb (b) worker. It was more concerned with start dates, salaries and hours, records of which were taken from Fourth.

74. **RW** was personally aware that the Claimants – and other **Handa** family members – were furloughed. He emailed **Arvan** and **Aran** to this effect on **22 October 2020** [**page 385]**. All three were furloughed from **August 2020** to **May 2021**.

75. In **November 2021**, HMRC wrote to the Respondent to say that it **would** be undertaking a compliance check (or audit) of grant payments made under CJRS. A firm of chartered accountants, UNW was engaged to assist with this audit. By **January 2022**, the HMRC audit had reduced in scope to checking ten individuals.

76. **RW**, in hindsight, believes that the Claimants were wrongly paid furlough because they were not employees or limb (b) workers. He has not communicated this view to HMRC because, he says, he is awaiting the outcome of these proceedings.

The individual claimants

Shivani (C1)

77. **Shivani** married **Neeraj** in **2013**. **Shivani** is a qualified pharmacist. However, following her marriage to **Neeraj**, she was expected to learn the family business. She was not put under overt pressure to give up her profession as a pharmacist. In the nicest way, she was told that she did not need to work as a pharmacist, that the family would provide for her and that she could involve herself in the business. She did not involve herself in the family business right away. Within a couple of years after her marriage to **Neeraj**, **Arvan** said to **RW** that he wanted **RW** to help her learn the business. **Shivani** did not give up her pharmacy work but she reduced the amount of work that she did in that regard. There is no evidence that anyone offered **Shivani** work at a stipulated rate of pay. Indeed, there was no evidence of any suggested amount by way of payment for any work that she might do. I find that there was no such discussion or agreement about what she would be paid if she did any work.

78. In preparation for her learning the family business, **Shivani** was set up with an **SHNL** email address. She also set up some shadowing with Claire Waters, Reservation Manager at the DoubleTree by Hilton hotel at Newcastle Airport [**pages 1210-1211**]. In **February 2015**, she accompanied **Arvan** at meetings with Leslie Tait, National Sales Director of IG Group and Ian Brand, Account Manager for Diversey Ltd [**pages 1214-1216**] regarding pricing for what appears to be tableware and hygiene products. Along with **Arvan**, she continued to be involved in agreeing supply terms for soap dispensers etc. in **April 2015** [**page 1217**].

79. **Shivani** was added to payroll in **April 2015**. The Fourth HR system records a 'start date' as **01 April 2015**. She added her bank details and personal details (address, date of birth) on a Starter Form [**pages 799-804**]. From **April 2015** she was paid a monthly salary through payroll and deductions were made in respect of national insurance and tax. **Shivani** never received any written contract or statement of terms and conditions as envisaged by **page 798**. As indicated, she had already been provided with a company car and the company paid for private health insurance through a joint policy with **Neeraj** with BUPA. She was given a desk in

the same office as **Neeraj** at CHG House and she was provided with a computer and an **SHNL** email address.

80. **IH** came to know **Shivani** through her involvement in some of the projects on which he worked, namely:

- **Holiday Inn, Birmingham**: **2015-2016**. This was the first time **IH** met **Shivani. Aneil**, the project lead, introduced her to **IH** and asked him if they could get her involved in the interior design side of the project to help her learn the business – as demonstrated by **Aran's** email of **30 November 2015**, at **page 984**. **IH** met **Shivani** for the first time while working on this project, which was a complex project involving the relocation of the reception from one side of the hotel to another. **Shivani** assisted in setting up and attending meetings with contractors and suppliers, such as Fitzsimons construction consultancy [**page 973**]. The purpose of attending project meetings was to enable her to learn about the interior design of the hotels, with a view to building her knowledge of how the business operated. She attended most of the project meetings during the life of the project which ran into **2016**. A measure of her involvement and contribution (of value) can be seen in the email exchange in **February 2016** regarding the sourcing of alternative heat lamps [**pages 1060 – 1065**]. She clearly carried out some analysis of prices on a spreadsheet and website. She attended most project meetings. On **11 February 2016**, **IH** forwarded to **Shivani** an email from an external contractor regarding costings on design aspects of the lobby, asking her if she had any concerns and were they still within budget expectations [**page 1046**].

- **Station Hotel, Aberdeen**. **Neeraj** was the lead on this project. **Shivani** was involved from the beginning. By **May 2015**, she was working with **Neeraj** on the rebranding of the Station Hotel Aberdeen to a Crowne Plaza [**page 905**]. In all, she attended about 10 to 12 meetings in Aberdeen regarding the refurbishment. She would discuss with **IH** and comment on design aspects undertaken by an external interior design company, 'Street Design Partnership'. On **01 June 2015**, she can be seen liaising with a supplier, Bourne Furniture, regarding the delivery of sample chairs [**page 934]**. She also gave her view on design aspects

of the project. On **21 June 2016**, **IH** asked **Shivani** if she would be happy to review and forward comments on finishes on the project on the basis that they would have 'one voice', clarity and because he trusted her taste [**page 924**]. On **01 December 2016** Street Design, emailed **IH, Neeraj** and **Shivani** regarding room number samples asking whether they were happy to proceed with the 'gold option'. **Shivani** replied two days later to approve the gold option asking about the cost [**page 931**]. In **January 2017**, she was assisting **IH** with thoughts on sample bedroom carpets [**pages 932-933**].

- **Elmbank, York**. **Neeraj** was lead on this project. The first phase of this project, in **2016/2017** was to upgrade the existing courtyard rooms to bring them up to the same standard as the main hotel. Then in **2018**, the Respondent was to convert the lodge from staff accommodation to more hotel rooms. The final stage was for it to become a franchised hotel involving renovation of the whole hotel. That phase was completed in about **June 2019**. **Shivani's** involvement in this project was as set out in her witness statement in paragraphs 36 to 44. It commenced in **June 2015** and consisted of liaising with an external contractor regarding the purchase of carpeting for the hotel lobby, hall, restaurant and staircase [**pages 1091-1095**]. There was fairly sporadic contact between her and Julie from egecarpets, from **June 2015** resulting in **Shivani** placing an order in **April 2016** [**page 1109**] and liaising with the carpet remover/fitter [**page 1115**]. She produced a snagging list in **June 2016** and also attended some design team meetings in **September 2016** and two catch up/review meetings in **February and March 2019**. She was copied in on what was happening by **IH** in **August 2016**, and she replied, explaining to **IH** that a border was to be run up the stairs [**page 1135**]. In **June 2016**, she received an email from Richard Frederickson, Group Telephone Engineer. Mr Frederickson, having read the snagging list for Elmbank, wanted to know if **Shivani** and another person (Jonathon) wanted to look to design some 'Cairn' generic labels for telephones or labels that were specific to the Elmbank hotel [**page 1124**]. **Shivani** also worked more generally on the snagging list for Elmbank along with **Neeraj**.It may not have occupied all of her time or even a large proportion of her time but there is evidence of her working on the project in **2015** and **2016** and, with one proviso, I find that she did so in the way she sets out in her witness

statement. That proviso is this: **Shivani** gives the period on which she was actively working on this project as being **2015 to 2020**. However, I find that the work that she did was in fact in **2015** and **2016**. She could point to nothing that she did in **2017** or **2018** and in **2019** the extent of her involvement was that she was invited to and attended two catch up meetings with others. **Shivani** said in her witness statement that there were more documents for this project that were missing. However, she did not give an account of any work that she did in the years **2017 to 2020**. I find that she did as much or as little as she chose and that by about **September 2016** she had for all intents and purposes ceased doing any work on the Elmbank project**.**

- Gardens Hotel, Manchester. **Neeraj** was project lead on this project. As far as I can make out from the evidence, she had extremely limited involvement in this project. From a combination of **Shivani's** sparse evidence as to what she did and **IH's** evidence in paragraph 39 of his witness statement, I find that she attended an initial site meeting and that she expressed her view on the samples of finishes sourced by Street Design. On **13 January 2016**, **Shivani** emailed Jess Sutherland at Street Design asking if she could join her on a presentation and if she could see the design process and mood boards [**page 1774**]. However, she carried out no work on this. She was copied into some further emails in **July and September 2017** [**pages 1776 to 1780**]. This was not, I find, because she had any particular role to fulfil in relation to Gardens Hotel but because she was keen to learn what was going on and to see the designs. Having done so, she then expressed her opinion on them. This was not part of any particular function or task she was expected to undertake on this project. To the extent that **Shivani** implies in her witness statement that her involvement in this project was from **2016 to 2020**, I do not accept this. There is no sufficient or compelling evidence to demonstrate any activity by her beyond what I have set out in this paragraph.

81. Angel Hotel, Cardiff. **Neeraj** was project lead on this project. On **19 October 2018**, **Shivani, Neeraj and IH** met with Una Barac, of Artelior, a design company. Ms Barac then sent a copy of the presentation to the three on **25 October 2018** and Shivani and Neeraj met with the designer on **02 November 2018**. Although Shivani

says there is documentation missing that demonstrates her involvement in this project, she gives no account of any work she did beyond attending the two meetings and receiving the presentation in advance. As far as I can make out on the evidence, and I so find, her involvement was limited as set out in this paragraph. I find that she simply attended meetings with the others to observe and learn what was happening. Neither Gardens Hotel nor the Angel Hotel got beyond the design stage.

82. Evidence of other activity by **Shivani** (not necessarily known by **IH**) is

- Along with others, including **Aneil, Aran, Arvan, Neeraj, Renu, Roshan, Vinni** and **RW**, **Shivani** was included in emails from Naila Ali, Revenue Assistant, in **February** and **September 2015** [**pages 1218 – 1221**] in which Naila Ali gives a breakdown of rooms sold and revenue received of hotels within the group.

- In **June 2015**, she sought quotes for 30 chairs [**pages 934-935**] for the Royal Station Hotel in Newcastle.

83. **IH** was never told what role **Shivani** had on these projects. In fact, he did not understand her to have any particular role. He did not consider or believe that she was under any obligation to attend project meetings. He did not ask anything of her nor give her any work to do by way of instruction. As far as he personally understood matters, her involvement was entirely optional on her part as she was a part of the **Handa** family and if she and the 'senior' members of the family wanted her to be involved in projects and to attend meetings and receive emails, he was fine with this. Nevertheless, he invited her to – and she attended – internal and external meetings and he copied her into emails regarding the projects. He introduced her as a member of the **Handa** family to external contractors, explaining to them that he was happy to include her in the distribution lists. I have no doubt and so find that **Shivani** was working on these projects. It may be that she was learning the ropes and developing her understanding but she was liaising with contractors, attending sites, giving her views on design and making recommendations and suggestions. She was learning the business and gradually getting more involved in and contributing to these projects with her valuable ideas

and suggestions. Mr Cordrey did not suggest that when involved, **Shivani** was not contributing anything of value. Certainly, that is not my assessment. Indeed, the value / quality of her (or anyone's contribution) to any project is not the point. She was personally working on these projects to some extent. The last contact **IH** had with **Shivani** was in **2020** before the first national lockdown.

84. Besides her involvement on the projects as set out in the above paragraphs, **Shivani** also did some work outside projects as referred to in her witness statement in paragraphs 49 to 55, with the exception that I was not at all persuaded that she did any work at Kenton Hall (see paragraph 54 of her statement). She gave no evidence of what this work was and I could make no safe findings based on the email she referred to at **pages 1798-1799** of the bundle, which spoke only of the possibility of appointing her to something but which was not sufficient evidence of the fact that anything came of it. It was not clear to me how **page 1799** was connected to page **1798** and, as they related to care homes, what this had, in any event, to do with **SHNL**. At most, **Shivani's** name was suggested for some unspecified work (and she was not even copied in on any of this) but there was no follow up and no evidence that she did anything. She ordered rolls of carpet and some beds in **August 2015** for the Saint George's Hotel **[page 1225-1227**]. That same month she was engaged in an email exchange with managers regarding telephone issues. In **September 2015** she raised some maintenance and housekeeping issues following a room inspection undertaken by **Arvan** and her of the Saint George's Hotel [**page 1236**]. In **June 2017**, she ordered some carpet tiles for the gym in a hotel in Stirling [**page 1249**]

85. **Shivani** attended a leadership conference in **February 2019.** She attended a bathroom exhibition in Frankfurt along with **Neeraj** on **11 March 2019**. She also attended CAIRN Group business review meetings. In **May 2021** she was involved in ordering en-suite bathroom products **[page 1305**] most likely in readiness for the hospitality sector re-opening after the third national lockdown and then she had some minor involvement in checking an invoice in **September 2021 [page 1306]**.

86. I can see no supporting documentary evidence of **Shivani** doing any work from then. That is unsurprising given she gave birth on **28 September 2021**.

87. The evidence clearly suggests to me and I so find that **Shivani** was more actively involved in attending meetings and liaising with contractors (assessing and expressing opinions on designs, doing price comparisons, placing orders, checking invoices), attending project meetings and monitoring hotel standards in the early years in **2015** and **2016**. She continued to take an interest in the business, especially on interior design but her involvement started to reduce after **2017**. There is evidence of activity by her in **2017** (albeit limited). There is no evidence that I could see of any work or activity by her in **2018** (or at least no sufficient evidence to enable me to make any findings as to the work she did). There was some limited activity in **2019** but the extent of her involvement reduced even further from the end of **2019**. Of course, the first national lockdown in **March 2020** explains the absence of any work from that date up to the removal of restrictions. She then had some further limited involvement in **May** and **September 2021**. From then I find that she did no work at all for **SHNL**. This coincided with her pregnancy and the birth of her child.

88. **Shivani** had no job title. She had no set hours. The amount of work she did and the times at which she did the work were for her to decide. There was nothing agreed or even discussed regarding sick leave or pay, holiday leave or pay, discipline, grievances or any of the usual hallmarks of employment. There was, I infer, simply an understanding between **Shivani** and **Arvan** that she could do what she wanted and that she would, in any event, receive monthly payments through the **SHNL** payroll. There were other employees in place, with written contracts and job descriptions to perform the work that **Shivani** involved herself in I address the question of whether this work was done under any kind of contract in my conclusions.

89. It appears that **Neeraj** and **Shivani** at one point considered moving to London. Mr Adams wrote to the Dudley Building Society on **22 July 2022** saying: "*I can confirm that the employment of Neeraj Handa and Shivani Tandon (by Station Hotel (Newcastle) Ltd would not be affected in the event of them relocating to London*." [**page 1339**]. I find that this was written simply to ensure the building society if needed.

90. In section 8.2 of her ET1 [**page 8**] **Shivani** says that when she returned after COVID, the projects she had been working on were no longer active, referring to the Angel Hotel in Cardiff (which had been sold to Madison Cairn) and the Gardens Hotel in Manchester (which was about to be sold). She does not say when she returned after lockdown, whether it was the first, second or third lockdown. However, in her ET1, she states that she believed her employment should have transferred to Madison Cairn with the sale of those hotels without setting out any factual basis for this. In fact, the Gardens Hotel was not sold or transferred to Madison – only the Angel Hotel in Cardiff and the Old Ship Hotel in Brighton.

91. In her witness statement **Shivani** said that after her 'maternity leave', she returned to work in **January 2023** by visiting sites. However, she has not referred to a single piece of work that she did. When asked by me when, in **January** she returned, she was unable to say. She said that, in any event, it was not regular and that it was, in fact, towards the end of **March 2023** that she went back to more regular work. However, she did not give any examples or indication of what she did in March either by way of regular work or how much time she spent. I do not accept her evidence on this. I find that she did not, in fact, return to work after COVID as she maintains. It is unsurprising that **IH** had not seen Shivani since **2020**. That is because she had not done much at all since the end of **2019**.

Shivani's pregnancy

92. Eligible employees are able to take up to 52 weeks' statutory maternity leave ('**SML**'), the first 26 weeks of which is called Ordinary Maternity Leave ('**OML**') and the last 26 weeks of which is called Additional Maternity Leave ('**AML'**). Only 'employees' may take **SML**. Statutory Maternity Pay ('**SMP'**) for eligible employees can be paid for up to 39 weeks, the first six weeks of which is paid at 90% of their average weekly earnings before tax and the remaining 33 weeks of which is paid at a fixed rate or 90% of the average earnings whichever is lower. That is the statutory entitlement. An employee may, of course, have a contractual right to company maternity pay. An employer can usually reclaim 92% of SMP.

93. **Shivani** became pregnant in **2021**. On **15 June 2021**, her doctor or registered midwife provided her with a form MATB1, certifying that the expected date of birth was in the week commencing **03 October 2021 [page 1310]**. This form is the certificate that is generally used by people to comply with regulation 4(1)(b) MPL Regulations. In order to qualify for statutory maternity leave ('**SML**') an employee must, if requested to do so by her employer, produce a certificate from a doctor or registered midwife stating the expected week of confinement ('**EWC**'). **Shivani** was not asked to produce such a certificate and nor did she provide it of her own volition. She did not expect to have to produce it to anyone in the business. If an employee claims statutory maternity pay ('**SMP**') she must produce medical evidence of the **EWC** by the end of the third week of the maternity pay period. This is so whether requested by the employer or not. An employer must notify an employee of the date her Additional Maternity Leave ('**AML'**) will end. Normally, one would expect this (and everything that preceded it) to be in writing albeit that is not obligatory. None of this happened in **Shivani's** case.

94. **Shivani's** baby was born on **28 September 2021**. Rather curiously, a doctor's letter of **11 October 2021** notes that she "works as a Pharmacist" [**page 1311**]. In cross-examination, **Shivani** accepted that she had told the doctor this and that she had not mentioned she worked in the hospitality industry for **SHNL**. That is particularly curious given **Shivani's** contention that she worked as an employee of **SHNL**, having been gently pressured or encouraged to give up her role as a pharmacist and dedicate her time and work to **SHNL**, something she maintains with pride that she was happy to do.

95. In an email dated **12 October 2021**, **Aran** instructed **DB**: "*I was hoping to get the benefit of Shivani pregnancy I suspect we cant so can we leave wages the same*" [**page 1313**]. **Shivani** relies on this in paragraph 75 of her first witness statement as evidence that she was paid full pay whilst on maternity leave.

96. Mr Stephens submitted that **Shivani** commenced maternity leave on or about **29 September 2021** and that from **29 September 2022** to sometime in early **January 2023** she was on agreed 'extended leave'. That builds on paragraphs 86 and 88 of **Shivani's** first statement where she says maternity leave 'would have' ended on

29 September 2022 and that she had accrued holiday entitlement which went someway to explaining why she did not return to work until **January 2023**. I reject this.

97. I am satisfied and so find that **Shivani** did not take statutory 'maternity leave'. The maternity leave scheme is set out in legislation, as summarised above. In order to qualify for statutory maternity leave, an employee must notify her employer no later than the end of the 15th week before the expected week ('**EWC'**) of childbirth (or if not reasonably practicable, as soon as is reasonably practicable) of: her pregnancy, her **EWC**, and the date on which she intends her ordinary maternity leave ('**OML'**) to start. None of this was done.

98. I am also satisfied and so find that she did not take contractual maternity leave, if indeed that is what was being asserted by Mr Stephens. There were no agreed terms that **Shivani** was contractually entitled to any period of maternity leave (or 'extended' leave), no dates were discussed with her, nothing was discussed about her pay, or her expected return date. There was simply nothing said at all. Further, it never entered **Shivani's** mind that she might have to tell any operations manager (or anyone outside the **Handa** family) that she was pregnant. It did not enter her mind as to whether she had any 'statutory' rights or 'contractual' rights. The reason for this was straightforward. It is because she did not see herself as an employee and did not see herself as in any way affected by statutory or contractual rights or obligations. **Shivani** simply had a baby and continued as she had done before she was pregnant to receive monthly payments from **SHNL**. I do not accept that she was on a further period of 'extended leave'. There is not the slightest evidence of any such agreement. She has sought to construct an argument after the event by dint of the fact that she continued to be paid and that **Aran** had confirmed that they could 'leave wages the same'. However, that is not sufficient evidence of any contractual agreement regarding maternity leave or maternity pay. The email was not sent to **Shivani**. It is more indicative of the fact that **Aran** was looking for means to save the company money by reclaiming SMP, something which he ultimately ruled out. As he has not been called to give evidence, I am unable to make any finding as to why, having considered it, he ultimately ruled out the prospect of reclaiming SMP. That she did not tell anyone about her pregnancy or that she

would not be available to do work is, I find, inconsistent with her assertion that she was bound under contractual mutual obligations to the company, especially when looked at alongside the other facts.

99. In her second witness statement, **Shivani** explained where she obtained her instructions from in terms of the work that she undertook for the Respondent. Following their marriage, she and **Neeraj** lived with **Arvan** and **Anita** up until **2021**. She said that **Arvan** would give instructions over the breakfast table about what he wanted her to do and that **Roshan**, when at CHG house, would ask her to update him about whatever project she was working on or that he would tell her to go and check one of the hotels or visit one of the care homes. She said that she did not report into any non-family executive as she did not regard any of them as her boss. She stated that because of her status within the family, unlike other employees, she did not have to give notice of holidays or worry about how many days she had left; nor did she have to fill in any forms regarding her maternity leave as it had all been discussed at home. She states that she had a lot more autonomy than other employees but work followed her home and it was impossible to have time off.

100. As regards any of this activity that I have set out above, **Shivani** was under no obligation to do any of it. She did not have to attend any place of work. She was not required to work any particular hours or to produce any work or to report to or to be accountable to anyone. Nor did she consider herself bound to do any particular work or work any particular hours. To the extent that **Shivani** suggests she received instructions on what her role was or what tasks she had to from **Arvan** each morning over the breakfast table, I do not accept this. Nor is it right, as Mr Stephens submitted, in paragraph 24 of his closing written submissions that the Respondent did not challenge this evidence. Mr Cordrey's challenge was more restrained than the challenge made to the honesty of the Respondent's witnesses. However, he sufficiently addressed **Shivani's** credibility when Mr Cordrey put to her that there was no mention of this in her further information when asked the very question regarding instructions.

101. I have no doubt that, on occasion, the family would discuss business at home. That is natural in a family run business. However, in her response to a request for

further information **Shivani** was specifically asked who instructed her to perform work tasks and how the instructions were provided. **Shivani's** answer was that the instructions were given by **Aneil**, **Aran, Arvan** and **Neeraj** in the form of emails/texts/calls/WhatsApp etc. [**page 38**]. There was no reference to receiving her instructions over the family breakfast table. Further, there was no email or WhatsApp or text message produced indicating any instruction to her do any particular task. I infer that it was the inability to produce any such evidence that reduced **Shivani** to say in a second witness statement that her instructions were given verbally by **Arvan** over breakfast or by **Roshan** when he visited the office. **Shivani** also stated in her reply to the request that she worked a minimum of 40 hours a week including travelling. I do not accept this. I consider it all implausible.

102. The material that **Shivani** has produced evidences involvement by her in projects and in the business mainly in **2015** and **2016** then diminishing in the subsequent years, with no activity following birth of her child in **September 2021**. Nowhere in **Neeraj'**s witness statement does he say anything about the work that **Shivani** did, whether she was under any obligation to do anything, whether he gave her any instructions. He says nothing about instructions being given by **Arvan** over the breakfast table. **Arvan**, as I have already noted, was not called to give evidence. It seemed wholly unrealistic to me that **Arvan** would give **Shivani** particular instructions regarding her work on projects when he was not on site, as opposed to **IH**, for example, who was managing the projects on the ground – or **Neeraj** or **Aneil**, who were leading on projects. Mr Stephens, in his written submissions at paragraph 35 referred to **IH** confirming that **Shivani** took instructions from him and **Aneil**. It is right that he said something to this effect. **IH** was unsure as to the extent of **Shivani's** involvement in the projects. When asked by Mr Stephens in cross-examination on the Elmbank project, **IH** said that **Shivani** was involved in those things that she was asked to be involved in, possibly by him or **Neeraj** or possibly by **Aran** or **Arvan**. However, that appeared to be contrary to **Shivani's** evidence in paragraph 12 of her second witness statement. She did not consider **IH** to be a person from whom she should or would take instruction or direction. She did not see **IH** as being her boss.

103. **Arvan** was, of course, a director. **Shivani** did not regard anyone who might naturally be expected to be her manager (such as **IH**) to be her 'boss' or anyone she would or should take instruction from. Yet **IH** was managing the projects in which she became involved. It seemed entirely unrealistic to me that **Shivani** would take direction and instruction from **Arvan** on projects 'over the breakfast table' as opposed to someone paid by the company to manage those projects and who was on site. I infer from **Shivani's** attitude towards non-family members (i.e. that she did not regard anyone as her boss, such as **IH**, and did not consider that she had to tell anyone of her pregnancy or maternity or holidays) that the arrangement was – and she understood it to be – entirely familial. She considered that she had no obligation to anyone outside the family. Any sense of obligation **Shivani** had was as a daughter-in-law to **Arvan**. She had almost complete autonomy as regards her dealings with **SHNL** and was not subject to the level of control typically found in an employment relationship. No or extremely little control was exercised over <u>whether</u> she did any work and if so, what or when. At its highest there was some 'expectation' that she would involve herself or contribute to the family business (which was not limited to **SHNL**) but no obligation to do so.

104. I am satisfied from the evidence as a whole, including that of **IH**, that **Shivani**, just as in the case of **Anita** and **Kiran (**after **2009)**, acted under no instructions as to the nature of the work she was to do, when to do it, how to do it or where to do it. At all times, I find that she had an entirely free choice as to whether she contributed anything to the business. Without doubt she worked and I have absolutely no doubt that when she worked her contributions were valuable. It is only natural that, when doing so and assisting on a project, as she was, that people – such as **IH** or **Aneil** or **Neeraj** would ask her to do certain things, just as she would ask others to do certain things. There is inevitably going to be discussions about what people who are involved in an activity do between themselves. However, there was scant evidence of any power of control exercised by **Arvan** over **Shivani** other than her reference to instructions in paragraphs 10 and 11 of her second witness statement. Her evidence was devoid of examples. To the extent that there were any discussions with **Arvan** over breakfast, or elsewhere for that matter, I find that they was more likely than not general chat or discussion about what she was doing. That would, in the natural course of things, most

probably have resulted in discussions regarding **Shivani** getting involved in particular hotels or projects or **Arvan** asking her to speak to certain individuals. **Shivani** describes **Arvan** as asking her to visit a hotel or a care home to check up on something or other and that sometimes they would go to together. That may be so and I do not for one moment doubt that. However, I am not at all satisfied that **Arvan** was controlling or directing her to do anything. The reality, I find, is that she chose what to involve herself in and once she exercised that choice, naturally there would be two-way discussions regarding what she would do or who she would speak to with those on site, such as **IH**. After all, others knew the business well and she was learning. She would have to ask or be told who to speak to or liaise with. That does not equate to a power of control over her work or when she did it. As I see it, and so find, it was simply an example of natural dialogue and cooperation between her and **Arvan, IH** and others but the underlying reality was that she was free to choose to do what she wished. As to the work that she did, Shivani was under no obligation to undertake it and the payments she received would have been made to her regardless – as indeed they were irrespective of any work.

105. **Shivani** accepted in evidence that, in the board minute of **05 July 2022** [**page 399 – also at page 1622**], **Neeraj** was referring to her (among others) where he stated that non-working family members should be removed from the payroll [**page 399**]. She was asked by Mr Cordrey why she thought her husband might regard her as 'non-working' if in fact he understood her to be working for the business. She suggested that the explanation for her husband proposing this (and for his later agreeing with **PW**'s email of **05 October 2022** on **page 429**) was that she was on maternity leave at this time and therefore she was not then working. When pressed on this, she said that she could not speak for what her husband was saying. Whilst recognising that she cannot speak for **Neeraj**, she was in a position to say what, if any discussions there had been between her and **Neeraj** on this subject. She implied that there was none. This was getting on for a year after **PW** had first raised the issue of 'working family members', including **Neeraj**, being provided with written contracts of employment. When **Neeraj** had been in discussion about obtaining a written service contract for himself back in **July** and

August 2021, he did not suggest to **Shivani** – or to anyone else - that she should be given a written contract. She was aware that he had signed a written contract of employment but neither he nor she discussed or suggested that she be provided with the same. I do not accept that **Neeraj** suggested removal of **Shivani** as a non-working family member because she was on maternity leave or 'extended leave'. That was opportunistic by **Shivani** and a fanciful explanation.

106. In **March 2023**, following the issuing of criminal proceedings, **Roshan** rang **PW** and asked for the decision to remove the claimants and others from the payroll to proceed. This was discussed and agreed at the board meeting in **April 2023**. In all, those whom **RW** directed **DB** to remove were: **Anita, Kiran, Shivani**, **Komal, Vineet, Fauzia Abedin, Luzviminda and Megan Staunton** [**page 438**]. Letters were sent to the Claimants as referred to above on **19 May 2023**. Thus, it took from about ten months) to put into effect a decision that had been approved by the board on **05 July 2022.** The delay was due to the rift that had developed within the family, the fact that the Respondent was dealing with grievances and counter-grievances. It was also partly explained, I find, by the sensitivity of the matter of removing people from payroll. Removal of family members from the payroll would mean payments from **SHNL** ceasing. There had been the unanswered question of what other financial provision could or should be made for them in that eventuality but as far as I can discern this was not resolved. Thus, the possibility of moving them from **SHNL's** books on to another company, such as **CHG** had been mooted, but never acted upon.

Kiran (C2)

107. **Kiran** first appeared on the Respondent's payroll in **1997**. The Respondent's Fourth HR system records a start date of **09 June 1997** at the age of seventeen. When a schoolgirl, she helped out at the Cairn and Carlton Hotel in Jesmond, Newcastle, undertaking tasks such as housekeeping and helping preparing buffets for conferences and events. It is not at all clear what **Kiran** actually did back then, what she was paid or what sort of hours she worked. I find that her work in that respect was very sporadic and very limited and on the balance of probabilities she was engaged on occasional casual work. For her, the story really begins around

2000 to **2001** after she had finished higher education and when she started working regularly on reception at the Royal Station Hotel in Newcastle. In her evidence, she stated the period from about **2000** to **2009** to be the period she worked there.

108. Even then, **Kiran** gives a very sparse account of what she did, the hours she worked, when precisely she started working in reception and the nature of her tasks. Her evidence on her role within **SHNL** was generally vague. However, there was sufficient evidence to enable me to find, as I do, that she worked regular shifts as a receptionist from certainly **2001** to **2009**. She was part of the reception team and subject to the rota that was drawn up by the reception manager. I am unable to say whether she worked every day, every week or even every month. The only finding I am able to and do make is that she regularly worked shifts, by which I mean it was not unusual for her to work shifts on reception. There was no evidence as to the frequency and no-one said what was meant by 'regular'. During that period, **Kiran** was paid a monthly salary, albeit there is no evidence as to what her pay was. There was no evidence either as to whether she was offered a role at any particular rate. I infer from the family context – and in keeping with the cases of the other claimants – that she was placed on payroll back in 1997. In 2000, because she was a member of the **Handa** family, she was provided with a role in reception. She did not apply for a position. She was given no contract, no job description, no job title, unlike others who worked on reception but who were not **Handa** family members.

109. Nonetheless, I am able to and do find that as a receptionist **Kiran** worked regularly alongside Carol Frizzell, and Sharon Beck. Her name was on the rota. Even though there is little evidence of how often she worked, it is a natural inference to draw from the fact that she worked according to a rota, that she worked enough to be integrated into the reception team of the Royal Station and that she carried out the tasks one would normally associate with that of a hotel receptionist: checking customers in and out, liaising with housekeeping and other departments as necessary and taking payments from customers. I find that this is generally the sort of work she was doing on a regular basis up to her marriage in **2009**.

110. In addition to her work as a receptionist at the Royal Station Hotel, **Kiran** assisted with bedroom and reception refurbishment in **2007** and **2008** in that she liaised with prospective contractors on price and design [**pages 727-728**]. Her involvement on this was fairly minor, such that **Kiran** herself gives no account in her own evidence of the work that she did. At its highest she says she '*became involved'* in the refurbishment by way of replacing carpets in the corridors and public areas. Limited though her involvement was, I am satisfied that, during the period she worked on reception at the Royal Station Hotel, she did carry out some non-reception work by way of proffering her view on furnishings and liaising with contractors and suppliers. However, this was outside the role that he was performing as a receptionist. I infer that she did it on a voluntary basis and as part of learning about other aspects of her father's business at his suggestion.

111. In **2009 Kiran** married. She moved to the south of the country, near London, where she settled and where she still lives (albeit at a different address to that when she first moved). In her evidence, **Kiran** was exceptionally unclear about any work that she did from **2009**. At one point she could not remember the location of the hotel where she said she worked (Bellhouse), until improperly prompted by an audible whisper from the hearing room that it was situated in Gerrard's Cross. My factual findings on **Kiran's** involvement in the business from **2010** to **2023** are set out below.

2010

112. In an email from **Arvan** in **September 2010** [**page 741**] he says to Nishant Barua that **Kiran** wanted to come along to meet some clients. This was said to evidence her regular attendance at the Bellhouse Hotel and her reporting back to **Arvan** and **Aran**. I do not accept this. There is no context to this email. **Kiran** is simply copied into it and she is mentioned only in the context of asking 'when Yvette is going out to meet clients as she also wanted to come along'. There is no evidence of any follow up to **Arvan's** suggestion in his email and no evidence from **Kiran** or from elsewhere, as to what she did.

113. On **14 October 2010, Arvan** forwarded some emails from a solicitor at Mincoffs to **Kiran** [**pages 1726-1727**] but there is no indication if she had anything to do with what appears to have been a licence application for the Bellhouse hotel. Emails on **pages 1726-1727**, between Matt Foster and Sara Cobain in **October 2010** were said to be evidence that **Kiran** was the 'eyes and ears' of **Aran** and **Arvan**. However, these emails were not sent to **Kiran**, nor was she copied in. There is no evidence of her doing anything in respect of them or the matters referred to in the emails or of reporting anything back to **Arvan** or **Aran**. That was the extent of the evidence adduced regarding any of **Kiran's** involvement in **2010**.

114. I find that Kiran did no work for **SHNL** in **2010**.

2011

115. There are three emails in **February and March 2011** [**pages 731-733**]. The first email was a query regarding fridges that **Kiran** had got 'ages ago', which I find refers back to the time when she lived and worked in Newcastle (up to **2009**). That, in itself, does not evidence that she did any work in relation to that query. The second [**page 732**] was an email to the hotel manager, **Arvan** and **Kiran**. Again, there is no evidence of any response from her or involvement. This does not demonstrate, as **Kiran** suggested that she was responsible for or managed the full replacement of the carpets. Although she was casting her mind back some 12 years or so, Michelle Harle recalled **Kiran** managing the carpet installation. I find that **Kiran** was involved to an extent in the carpet installation in the corridors and public areas of the Station Hotel in that she liaised between the maintenance manager, Chris Hun, and the carpet supplier and she sourced the carpet. The third email [**page 733**] is an email to **Kiran** in **March 2011** asking whether she had found any net curtain suppliers. There is no evidence of any response from her to that email but I infer that **Kiran** was liaising with the supplier to source the curtains. There were further emails between **pages 1729 - 1732** in **May 2011** but they evidence no activity by **Kiran**, only that she is copied in on some. However, I infer from them that – at that time – **Kiran** was showing an interest in and taking some part in refurbishment works. On **17 May 2011** Lynda Buckle, Housekeeping Manager of the Bellhouse Hotel, emailed **Kiran** asking if they can have the white

lamp shades changed to cream ones [**page 1728**]. Again, I find that she liaised between the hotel and suppliers and sourced some lamp shades. It is notable that in that email, Lynda Buckle congratulates **Kiran** on her pregnancy. The expected date of birth of **Kiran's** child appeared to be **September 2011**.

116. I find that **Kiran** did some limited work in the business in **2011** but not after summer of that year.

2012 - 2015

117. There is not a single piece of supporting evidence to demonstrate any activity by **Kiran** whatsoever in the whole of **2012, 2013, 2014 or 2015**. Not only is there no supporting documentary evidence, **Kiran** says nothing in her evidence about these years.

118. I find that **Kiran** did no work for **SHNL** in any of these years.

2016

119. There is some evidence of **Kiran** making contact with others within **SHNL** in **2016**. However, from the evidence before me, I find the contact she had with **IH** was regarding her own private property and did not involve her doing any work for on behalf of **SHNL** [p**age 739 - 745**].

120. I find that she did no work for the Respondent in **2016**.

2017

121. I was referred to **pages 746-748** where there was an email exchange regarding Arjan Bujis dated **20 October 2017**. This email was said to demonstrate **Kiran's** 'assistance with the operation in all areas of the hotel'. This was an email which had been forwarded to **Kiran** and Sophie Rose because the sender had received an out of office from the person to whom the email was initially addressed. It

concerned a cancellation fee regarding a hotel stay. There is no evidence of **Kiran** doing anything in relation to the email. I was also referred to an email on **page 657** from **06 November 2017** regarding a request for a price for a hall. However, this is simply an inquiry by **Kiran** on behalf of a friend as to how much it would be to hire the hall, which I infer to be in the hotel, so that **Kiran** could obtain for her a discount. There was a similar email on **page 749**. I find that these were simple queries passed on to Kiran or made by her in respect of friends and associates. I find that she did no work for or behalf of **SHNL** in **2017**.

2018

122. In **February 2018**, **IH** put **Kiran** in touch with someone regarding private work on her home [**page 659-663**]. In **April**, they were in contact again regarding a private **Handa** family event [**page 654**]. In **June 2018**, **Kiran** contacted Kimberley Barnett of Stoke Place hotel about sourcing a hairdryer and mattress for her private use [**page 665 – 667**]. An email on **page 668** from **01 July 2018** concerned a person wanting to book bedrooms, a function and dinner. This was simply **Kiran** passing on inquiry from a 'school mum' as was the case regarding the email on **page 682** referred to in paragraph 126 below. Similarly, the contact evidenced on **pages 765-771** concerns materials required for her home and the email on **page 783** concerns a personal event. **Kiran** contacted Ms Barnett again in **July 2018** on behalf of a friend [**pages 668 – 669**]. In **July 2018**, she was in contact with Christopher Stafford and Sara Bate, again regarding materials for her private use [**pages 670 – 674**] and again in **September** and **October 2018** she was purchasing materials for her home [**pages 675 – 681**]. None of this activity demonstrates that **Kiran** did any work for **SHNL**. It was all in connection with obtaining products, via the channel of the company, for her home and private use or making inquiries on behalf of acquaintances.

123. All of the above examples (and the example on **page 682** referred to in paragraph 126 below were described by **Kiran** as evidence of her working in 'general business development'. I have no doubt and so find that **Kiran**, and other members of the family promoted the family's hotels whenever they could. It takes

no leap of the imagination to infer that **Kiran** often spoke with pride to her circle of friends and acquaintances about the family business, no doubt encouraging them to use the facilities and, as is apparent from some of the emails, on occasion telling them that she would be able to get them a discount. However, I do not find that in doing so, she was working or acting in the course of any role or doing work that she had been assigned or asked to do, whether by **Arvan** or anyone else.

124. An email exchange on **page 783** from **April 2018** regarding sample menus was said to demonstrate how she brainstormed menus with chefs. However, there was no evidence that she responded or did anything in response to this email. The email is some evidence that **Kiran** had discussed menus in **April 2018**. However, considering the evidence of **IP**, which I accept and the email at **page 664**, this was, I find, an exchange regarding menus for a personal **Handa** event, as opposed to a feature of any work that **Kiran** was undertaking on behalf of **SHNL**.

125. I find that Kiran did no work for or on behalf of SHNL in **2018**.

2019

126. On **20 August 2019**, **Kiran** passed on a query from a woman who was looking to book private dining for 38 people and children **[page 682]**. This was another example of **Kiran** passing on queries from people she knew. Again, I do not find that, in doing this she was doing any work for **SHNL**. She was simply acting as any family member might by telling a manager that someone she knows is looking to make a booking.

127. I find that **Kiran** did no work for **SHNL** in **2019**.

2020

128. There is no supporting evidence to demonstrate any activity by **Kiran** in **2020** up to the first national lockdown in **March 2020**. I find that she did no work for **SHNL** in **2020** (allowing for the fact that COVID from **26 March 2020** impacted on the ability to do any work).

129. On **11 May 2020**, **Aran** emailed **Arvan, Anita** and **Renu** about **Kiran** and **Komal**. He said that, as they came through the pandemic he wanted to 'ensure that they had a small sustainable business that would be able to give them enough money and resources to be able to deal with the day-to-day requirements and will either try to open some coffeeshop or nursery.' [**page 609**]. This led to an exchange of emails later that month and into **June 2021**, whereby **Aran, Arvan, Komal** and **Kiran** were considering setting up a nursery business [**pages 610-617**].

130. find that **Kiran** did no work for **SHNL** in **2020**

2021

131. In **June 2021**, **Kiran** accompanied **Arvan** to an interview at the Indigo Hotel, Kensington. She attended, not in order to perform any function or role or to ask any questions, but simply to accompany **Arvan.** That same month, **Arvan** asked **IP** to get in touch with **Kiran** as she was thinking of getting involved in the hotels' spa and leisure side of the business.

132. **Kiran** met with **IP** three times in **June** and **July 2021**. The first time was on **18 June 2021** at a business review meeting as set out by him in paragraph 21 of his witness statement. The second occasion was on **30 June 2021** as set out by **IP** in paragraph 22 of his statement and the third occasion was on **29 July 2021** as set out in paragraph 23 of his witness statement. **Kiran** gave no evidence as to what these meetings were about, what her role or involvement was or whether she was there to undertake any specific tasks. She played no part in the business review meeting on **18 June 2021**. She merely observed. At the second meeting on **30 June 2021**, **IP** asked what she was interested in and she shared some thoughts about what she would want to do in the future. At the third and last meeting they had, there was a further general discussion about what she might want to do. However, she did not undertake any work for or with **IP** and nor did she respond to the information which he had sent her in advance [**page 775**]. **IP** invited **Kiran** to these meetings and sent her information, not because he had any tasks for her to perform and not because it was to enable her to do any work with or for him or

even on her own account. He invited her because he had been asked to by **Arvan** and it was to enable her to learn about that aspect of the business.

133. Emails at **pages 751-756** in **July** and **September 2021** were said to evidence **Kiran's** involvement in the selection of spa services and treatments offered to guests. My findings regarding those emails are as follows. As regards the emails in **July 2021** [**pages 750-751**]. Adrian Thomas Leisure and Spa Operations Manager at the Crowne Plaza, Gerrards Cross, forwarded to **Kiran** a presentation from a supplier. Mr Thomas is keeping **Kiran** informed. There is no evidence that she did anything having been so informed. As regards the **September 2021** emails [**pages 753-756**] there is some evidence that **Kiran** discussed with Tina O'Hara, Group Director of Sales for the Cairn Hotel Group, regarding some spa products. On **29 September 2021**, **Tina O'Hara** forwarded **Kiran** an email from **May 2021** regarding agreed actions [**pages 778-779**]. This was followed by an exchange in the latter half of **October 2021** whereby **Kiran** and **Ms O'Hara** tried to meet up for a chat [**page 777**]. I infer from the content of the exchanges between **Arvan** and **Aran** from the summer of **2021**, that it was becoming clear to them that they would have to start thinking about making different arrangements for **Kiran** and **Komal**. I find that **Kiran** was looking around for ideas as to what she might do. It was not unusual for her to ask others working in the business for information and ideas and this is, I find, what she was doing on these occasions, just as she was when meeting with **IP**.

134. In re-examination, Mr Stephens took **Kiran** to an email at **page 1737** from **January 2021,** and asked her what she knew of the suggestion that '*she take Birmingham / midlands*'. **Kiran** confirmed that all she knew of this matter was that 'they' were thinking of a new 'project'. There was no further elaboration nor any evidence from her that she or anyone else did anything in connection with this new project or as to what it even involved. It is clear from the whole of the exchange [**pages 1737-1738**] and I so find that this discussion was about **Kiran** and **Komal** potentially setting up their own business, to run a franchise operation and nothing to do with any work she had been doing or might do for **SHNL**. I find that **Kiran** was beginning to take an interest in the prospects of getting into some business.

She was unsure what it was she would do and was aware that her father and Aran were content to guarantee any start up business. One potential interest of hers was in leisure and spa, in addition to a nursery business. Speaking to IP is likely to have been of some benefit to her. The prospects of setting **Kiran** and **Komal** up in a business was still being discussed as of **September 2021 pages 616 - 618**]. I am not satisfied that in attending these meetings with **IP** she was working for **SHNL**. On the contrary, I am satisfied from all the evidence that it was to gain an understanding of how that side of the business worked in case she should decided to go down that route.

135. There was no compelling evidence of **Kiran** doing any work in **2021**, save for her own assertion in her witness statement. I find that Kiran did no work for **SHNL** in **2021**.

2022 - 2023

136. Similarly, there was no supporting evidence to satisfactorily demonstrate that Kiran did any work in **2022** or **2023** and I find that she did none right up to the time when **SHNL** wrote to her in **May 2023** removing her from the payroll. On **09 July 2022**, **Kiran** asked Edward Adshead, General Manager of Crowne Plaza at Gerrards Cross if she could be '*added back as staff*'. This request was made for the sole purpose that she could book a room at a reduced rate [**page 699-700**].

Kiran's move from the North-East in 2009

137. After they moved from the North-East, **Kiran** and her husband started a family. Doing the best I can from the evidence their first child was born in **September 2011**. At some point a nanny (**Luzviminda**) was engaged to assist her with her children. The nanny's services were paid through **SHNL's** payroll. Again, doing the best I can on the evidence before me, **Luzviminda** was engaged around the time when, sadly, **Kiran** was diagnosed with and started receiving treatment for cancer in about **March 2019**. Not many people were made aware of **Kiran's** diagnosis. Neither **RW** or **AS** were told of this and no-one in HR or payroll were informed either. There was no question of **Kiran** having to inform anyone in management that she would be absent from work and she did not do so. This was, I infer,

because she did not believe herself to be an employee of the company or to be in any kind of contractual relationship with it.

138. I find that once she became a mother, **Kiran** essentially 'checked out' of the family business save that she continued to receive payments through it. To the extent that she had once worked for the company when she lived in Newcastle, that was no longer the case and she did not believe she was in any contractual relationship with **SHNL**. **Kiran** would from time to time visit the Crowne Plaza hotel near to where she lived to use its facilities and if she noticed something that merited any comment to a manager, she might mention it to someone. However, that was not in the course of doing any particular work under instruction nor was it done out of any sense of contractual obligation. Rather it was a feature of her position as being the daughter of one of the owners of the business, of which she was proud. It was natural and understandable that she would raise any concern if she saw one. She never attended the leadership conferences. She attended no business review meetings.

Payments to Kiran

139. Although **Kiran** had done no work for **SHNL** since leaving Newcastle in **2009** (save for a period in **2011** referred to above), she continued to receive payments through the company. The payslip of **13 September 2011** records her as receiving 'maternity pay' [**page 570**]. The next payslip in the bundle, of **18 December 2012** does not refer to maternity pay. It records the number of hours as 1, with a payment of £673.09 [**page 571**]. That is the same for **20 December 2013 [page 572]**. The payslip for **31 December 2014** shows 1 hour a month, with a payment of **£1,458.33**], That is the case for **31 December 2015 [page 574**], **29 January 2016 [page 575], 29 December 2017 [page 576]** and **29 March 2018** although the pay for the stipulated 1 hour is by now £2,000 **[page 577]**.

140. Between **April 2018** and **November 2019**, **Kiran** was paid £70,000 in dividends [**page 608**]. In **October 2019**, **Arvan** and **Aran** agreed that **Kiran** and **Komal's** pay would increase to give them an equal net income which amounted to a gross

annual salary of £43,159 [**pages 603-604**]. In addition, **DB** was instructed to pay **Kiran** an unexplained one-off payment of £5,000.

141. In **July 2020**, **Arvan** and **Aran** agreed that **Kiran** and **Komal's** pay would increase to £58,100 from **26 June 2020** and that they would remain on furlough. This represents an increase of almost 25%. **Arvan** instructed **RW** directly on this [**page 606**]. On **12 June 2021**, **Arvan** instructed **DB** and **AS** to pay **Kiran** £10,000 that month from **SHNL** and to deduct the extra from the following two months [**page 607**]. It seems that from around this time, **Aran** and **Arvan** started to fall out about matters, including about the financial arrangements for their daughters, **Kiran** and **Komal.**

142. In **January 2022**, **Arvan** and **Aran** started discussing the need to treat their daughters in law and daughters the same [**page 619**]. There is a lengthy string of correspondence running from **January 2022 to October 2022** [**pages 620 – 638** – replicated in the Claimants' supplemental bundle] from which it is clear that tensions within the family during this period are gradually increasing. There is tension not just between **Aran** and **Arvan's** side but within **Arvan's** side of the family, where **Neeraj** is unhappy with actions taken by his father. **Kiran** and **Komal** are the main focus of attention in this series of exchanges. The emphasis is on money, on ensuring that they are financially secure. There is talk of paying them a dividend instead of wages or of setting them up in some business or increasing their shareholding in **Solehawk**. There is not a single reference to any work that they do for **SHNL**

143. By **January 2022, Aran** and **Arvan** (under the subject heading 'Solehawk shareholders agreement) were discussing paying **Kiran** and **Komal** a £30k dividend or find a way of paying them more and also to reduce the tax they are paying both in respect of **Kiran** and **Komal** but also their daughters in law, which included **Shivani** [**page 219 - 620**]. On **10 April 2022**, a payslip shows a rate for 1 hour as £4,425 [**page 581**] and on **10 May 2023**, it is £4,425 **[page 582]**.

144. There are email exchanges between **Aran, Arvan** and **Neeraj** and sometimes copying in other family members between **January 2022 and August 2022** [**pages 620 – 637**] regarding ensuring that **Kiran** and **Komal** (in particular) are looked after

financially, that they will not live on handouts. The split between the two sides of the family is very evident in many of these exchanges, extending between **Kiran** and **Komal** over matters such as nannies and who benefitted more from the family businesses. The essence of the exchanges is money and, I infer, how to keep **Kiran** and **Komal** in lifestyles they are accustomed to and expect and to ensure that they get as much benefit as all parties can by paying as little tax as they can. Conspicuous by its absence is any reference to **Kiran** – or for that matter **Komal** - doing any work for **SHNL**. On **10 July 2022**, **Aran** emailed **Arvan**, **Neeraj, Naveen, Komal, Kiran** and **Aneil** as follows:

"In last board meeting it was agreed that people who did not actually work in the business should be removed I have asked Arvan whom has not been able to respond. I intend to move the kiran komal to solehawk if there are objections I will need them asap. People have standing orders mortgages etc." **[page 633]**.

145. Given my analysis of the evidence and finding that **Kiran** did no contractual work for **SHNL** most likely since **2009** and certainly since **September 2011** at the latest, it is no surprise that there is no reference by anyone in these emails to **Kiran** or **Komal** doing any work. The payments made to her since **2011** were not in return for any work. Against that finding, there has to be some way of explaining how **Kiran's** pay was increased in the following years and in **July 2020** to the level that it was. The natural inference from the facts and context is that she was paid these sums simply because she was family. The company payroll was, I find, simply a vehicle or mechanism by which money could be channelled to her. Since leaving Newcastle, she had no base, no line manager, no role, no title. There as no written contract nor orally agreed terms, She never verbally agreed any terms of employment or work.

146. It never mattered to anyone that this practice of using the payroll simply to channel money had been going on for many years. That was simply what the family and the business did and it was simply accepted by **RW**, **AS** and others without question. However, when, following **PW's** appointment in **July 2021**, the practice of simply paying non-working family members through the payroll was placed on

the agenda, this subsequently generated discussion about how to ensure that financial provision continued to be made to non-working family members.

147. In her oral evidence to the tribunal, **Kiran** accepted that her father, **Arvan**, and her uncle, **Aran**, discussed and disputed between themselves what should be done regarding payments to her and to **Komal**. In **July 2022**, **Aran** expressed the view that she could not remain on payroll because the board had decided that those who did not actually work in the business should be removed [**page 1750**]. As it happened, this coincided with **Neeraj's** view. **Aran** proposed moving **Kiran** and the others to **Solehawk**.

148. **Arvan** then suggested keeping **Kiran** and **Komal** on **SHNL** payroll and paying them a one-off dividend of £30k each. He later suggested £50k dividend each from **Solehawk** and for the **SHNL** board to review the wage at **SHNL Aran** responded [**page 1749**]: "…*I've been pointed out that Kiran and Komal are not involved in SHNL's business we have been taking a tax deduction for years Sadly I do not trust you or Neeraj hence Dividends is the only or set the Kiran Komal in a business [sic]".*

149. **Arvan** replied shortly after that, saying:

"*I have always said we should set Komal and Kiran up together*
We can still do that but not Solehalk yet till we decide carefully
They can easily be involved if the board approves simply by visiting one or more site periodically or checking something…"

150. **Arvan** was in effect saying that they could only justify keeping **Kiran** on the payroll just by getting her to visit a site periodically. This was put to **Kiran** by Mr Cordrey and she agreed that this was indeed what he had been saying – although she did not agree that she was not providing services to the company. This was an attempt at window-dressing. It was suggestion that they could remain on the payroll and that they could make it appear as if **Kiran** was working for the company, whereas in reality he knew that she was not. It has been **Kiran's** case in the hearing before me (as it was **Anita's** and **Shivani's**) that they took their instructions and direction from **Arvan**; that it was he who told them what work they

had to do and that he directed them. I reject this as a convenient assertion of last resort and which flies in the face of the objective reality as I find it to be. Nowhere, in this discussion about what should happen to any of the Claimants (or for that matter anywhere else) is there any reference by **Arvan** to his belief that they are working or to him having given them directions or work to do. The Claimants could have but did not call **Arvan**. I am satisfied and find that **Arvan** did not give **Kiran** instructions on what work to do, or when to do it. She was not in a position whereby she acted under any direction from anyone. That is not to say that she was not in any 'involved' with the business ('the word she uses). She was 'involved' in 2011 as I have set out above. However, she continued to receive payment irrespective of any involvement.

151. From the evidence and the facts as I have found them to be above, the primary concern of **Aran** and **Arvan** was the need to provide financially for their daughters and their in-laws by whatever vehicle was available to them. Counsel for the Claimants said it made no sense to provide benefits through a company payroll as it is not tax efficient. Whether it was sensible or not is debatable but not the point. The vehicle chosen was to pay money through a company's PAYE system. It did not even necessarily need to be **SHNL's** payroll, as evidenced by the suggestion to move the Claimants to the payroll of **CHG**. The evidence inescapably points to a concern simply about financial provision, however that provision it to be made. Other payments were made through dividends. **Arvan** and **Aran** considered setting their daughters up in business on their own account by guaranteeing up to a million pounds each through **SHNL.** Consideration was given to paying some money from the sale of land at Belsay [**pages 615-618**]. In all the exchanges I have seen, nowhere in any of the exchanges between **Aran** and **Arvan** or between **Kiran** and others is there any recognition or suggestion that **Kiran** had a job, under a contract with **SHNL**. One notable email exchange was in **April 2017**, when **Arvan** asked for **Kiran's** salary to be increased to £80k a year for a period of 12 weeks, then to revert to £20k [**pages 1734-1735**]. There can be no legitimate reason that I can conceive for suggesting such a pay increase that in any corresponds to any contribution **Kiran** had been making to the business. **Arvan** then confirmed that this should not happen [**page 1736**], following, I infer from **page 1734**, a discussion

with **DB**. At the time, **RW** guessed that this was to do with a mortgage application or something similar. Whatever the reason, it demonstrates that **Arvan** considered the **SHNL** payroll to be no more than a vehicle by which money could be channelled to a family member with no connection whatsoever to any work or employment contract.

Anita (C3)

152. **Anita**, as set out above is married to **Arvan** and has been since about **1978**. She does not know what **Arvan** is paid and has never asked him. She does not know and is unable to say when she first became an 'employee' of the Cairn group, something which she claims always to have been in paragraph 6 of her witness statement. This assertion contradicts the case advanced by her and on her behalf, namely, that she became an employee in **June 2019** when she was put on **SHNL's** payroll. If she had, as her witness statement, suggests been working for the Respondent for many years before **June 2019**, she was doing so for no payment from **SHNL**.

153. From the point of marriage to **Arvan** she helped out in the family business operated by the **Handa** family. She worked in reception and in the bar at what was then the West Parade Hotel. She was never paid for this work which predated the incorporation of **SHNL** in **1985**. **Neeraj** was born in **November 1983**. It is unclear how often she worked prior to or after his birth but I have no doubt that prior to his birth, **Anita** did undertake some unpaid work in some aspects of her husband's then business.

154. What is less clear is what, if any work, she did for **SHNL**. For many years before being put on **SHNL** payroll she benefitted by receiving payments (through a different mechanism) and a company car. Up until **2017**, any payments she received were payments through the **CHG** partnership. **RW,** in communication with **Arvan** in **July 2018** regarding the **Handa** family 2017/2018 tax return, said:

"*For Renu and Anita both are set up on the payroll system but receive no pay. They're not directors of any company and hence if we say that any of their car usage is for the business it's inconsistent and we're likely in contravention if [sic]*

minimum wage legislation. Therefore, it seems sensible to either pay them a salary for last year and only tax some car time as personal or pay them nothing and tax all car time as personal.

The partnership tax position used to cover this so while this seems like extra tax we're still saving on the past." [**page 258**]

155. In **June 2019**, **Arvan** asked for **Anita** to be added to the payroll [**page 472**]. On **05 June 2019** he emailed **DB** as follows:

"*Please can you add Anita Hand on the payroll to Head Office and pay her 3000.00 each month and the pay should go in Friday if possible*." [**page 472**] On receipt of this email, **AS** asked **Aran** whether she should also add **Renu** to the payroll as well. She did not read the instruction as indicating that Anita was doing or was going to be working for **SHNL**. The Fourth HR system records her 'start date' as being **17 June 2019**. That start date simply signifies the date **Arvan's** instruction was actioned.

156. **Anita** was vague about what sort of work she did before and after **June 2019**. She never referred to having any particular job remit. As with the other Claimants, there was no job title as such and no description of what it was she was expected to do. As has been seen, that was common to all three Claimants. As regards her involvement in the hotel business, **Anita** relied on evidence given by **Michelle Harle** ('**MH**'), General Manager of the Station Hotel. She pointed to some email exchanges between her and **MH** to evidence that she was working for the Respondent as follows:

- On **13 May 2016**, **MH** forwarded **Anita** an email exchange she (**MH**) had with a flower/plant supplier (Ambius) keeping **Anita** informed of the cost of some flowers/plant arrangements. **Anita** replied on **16 May 2016** saying '*time for change. We will try to get more off. We will not rg her for a few days and she will get bk to us*.'

- On **14 June 2016**, **MH**, forwarded **Anita** an email as follows: "*this is for the two mats as we discussed. Shall we go ahead? We only need it done 26 times per year not every wee*k."

- On **19 July 2017**, **MH** forwarded an email from Housekeeping to **Anita** as she (**Anita**) had asked about the prices for curtains. **MH** said: "*catch up when you are next in as would loke to look at some lamps for the reception area with you for night-time to create a more welcoming atmosphere"*. **On 07 August 2017**, **Anita** replied: "*Hi, did the curtain guy came [sic] to measure windows on Monday*".

- On **16 August 2017**, Helen from Katherine's Florists emailed **Anita** to say that her florist business would love to supply her company's hotels with flowers. On **17 August 2017**, **Anita** replied to say: '*Hi Helen, yes we happy to go ahead*."

- On **26 October 2017**, **MH** emailed **Anita** asking for '*permission to order the scent cube for the reception area'*.

- On **12 February 2018**, **MH** emailed Christopher Stafford to instruct him to arrange for the exchange of some lamps or to obtain a full refund. She copied **Anita** in to the email. **Anita** responded to say "*Hi dear, it is good to get refund. Look for some thing better. Send him the reference no I gave you*.".

- On **25 May 2018**, **MH** emailed Viv Brown saying that **Anita** had asked her to do another flower display for the reception desk. She then forwarded that email and Viv Brown's reply to **Anita** saying: "*I would really love to get the two really large ones done but put at the top of the staircase, they would look just amazing in the reception. Just need your approval, they will match in beautifully and finish the reception off perfectly*." The following day, **Anita** replied to say "*yes go ahead and ask her to gv us good price*."

157. All of these examples pre-date **17 June 2019** when **Anita** first started receiving payments from **SHNL** through its payroll and the date on which she claims, in these proceedings, that a contract of employment (or work) was formed (paragraph 58

of Mr O'Dair's closing written submissions) and her employment commenced [ET1, **page 101**].

158. **Anita** sought to give the impression that she assisted **MH** throughout **2019** until she was placed on furlough in **2020**. I accept **MH's** evidence and that of **Anita** that, back in **2019, Anita** checked the cleanliness of some bedrooms. This consisted of a visual inspection of the rooms at the Royal Station Hotel by **Anita**, and the subsequent expression of her opinion thereon. She visited the hotel fairly regularly and she would check on the standard of cleanliness even though the Respondent had employees to do that work. She also occasionally attended meetings with **Arvan**. However, there was no requirement for her to do this. She was not expected to do it and, if **Anita** did not come in, there was no consequence to any element of the business in any way. There was no obligation on **Anita's** part to do anything at all. It was entirely down to her whether she did so or not.

159. Between **June 2021** and **May 2022 Anita** received emails welcoming her to the 'Cairn Group online training platform, inviting her to review meetings and appraisals and training events [**pages 323 – 338**]. None of these emails was tailored to her specifically. They were simply generated automatically and solely because she was on the Flow and Fourth systems. She did not attend the meetings, reviews or appraisals and did not attend the training events referred to. She did, however, subsequently undertake some first aid training in about **May 2023** (see below).

160. The only evidence of any activity regarding hotels after **June 2019** was in **September 2021.** Even then, it was extremely limited. **Anita** provided some helpful verbal feedback to **MH** after she stayed the weekend in one of the Respondent's hotels in Harrogate. **MH** took a note of the feedback and forwarded it to the General Manager of that hotel, Andrew Glover [**pages 510-511**]. It was not unusual for **Anita** to proffer such feedback. She would do so as a matter of course when she visited or stayed at any of the hotels and would compliment management or, where necessary, point out any issues she had noticed. This is unsurprising given she is part of the owning family.

161. I do not accept (as was suggested) that **Anita** had anything to do with any costings on the impact of a flood at a Cardiff hotel [**page 505**] in **February 2020**.It is correct to say that **IP** included **Anita** in an email he had sent to **IH** about this. However, he did so in error. He had never met **Aran** or **Arvan** or **Anita** at the time he sent the email and he had no idea who she was. **Anita** does not mention anything about this in her witness statement and there is no reference to her doing anything with respect to the email. Receiving an email in error does not demonstrate that she had any role to play at all in that work. All that this exchange demonstrates is that **Anita** had an **SHNL** email address.

162. In **July 2021, Anita** turned up unannounced and uninvited to a Senior Leadership Team ('**SLT'**) meeting. She does not say why she attended that meeting and she refers to it in her witness statement only by way of comment that **RW** regarded it as 'family surveillance'. There was no reason for **Anita** to attend the small, working **SLT** meeting. She was not and never suggested that she was part of the **SLT**. She had not been invited and had no role to play. RW did not consider this to be appropriate for the reasons set out in his witness statement at paragraph 21. By this time some 'bad blood' was developing within the business. Mr O'Dair was critical of the reference by **RW** to 'surveillance'. True it is that the description carries the ring of a spy-novel but the meaning is clear: she was seen as being present only for the covert purposes of reporting back to **Neeraj**, something which **RW** regarded as inappropriate. That is why he decided that the meeting should not continue in her presence. In light of there being no role for **Anita** to carry out at an SLT meeting (and none suggested) I infer that was precisely why she attended. I can readily understand why **RW** considered such attendance to be inappropriate. I reject Mr O'Dair's endeavour to characterise this as being part of **Anita's** 'supervisory' role or of some wider 'managerial oversight'. Lest there be any doubt about it, I make clear my finding that **Anita** had no supervisory or managerial role in **SHNL** whatsoever.

163. **Anita's** health was poor from about **March 2022** to about **February 2023**. In her evidence, she said she worked mainly in care homes owned by **Solehawk** and **Popular** after **February 2023**, albeit she was she maintains, employed by **SHNL**. She relied on evidence of Margaret Scott ('**MS**') in support of her contention that

she was working. **MS** is currently Home Manager of Spynie Care Home in Elgin, in Scotland. However, she had been Home Manager at Kenton Manor Care Home in Newcastle many years earlier. There is no doubt and I so find that in **2023**, **Anita** regularly visited Kenton Manor to help out at the home. How this came about I set out below.

164. In about **March 2023**, **Arvan** spoke to **Steve Massey ('SM')**, the Operations Manager of **Solewhawk** and **Popular**, and mentioned that **Anita** would like to come in and help out at Kenton Manor Home. **SM** agreed, even though there was no need for her to do any work. As she was the wife of **Arvan** he felt that he was in no position to say no to this request. **SM** is responsible for assessing and setting staffing levels within the care homes. He agreed that **Anita** could come in on a voluntary basis to assist those in reception. The homes did not require any additional support in reception. They were fully staffed, including having sufficient staff to cover sickness absence and annual leave.

165. Mr O'Dair was critical of **SM's** use of the word 'voluntary' in his witness statement. However, that is a word that **Anita** herself used to describe her activity at the care home in answer to a question from Mr O'Dair. She said her husband had asked **SM** if she could work as a volunteer as she was interested to find out more about dementia. Further, **MS** was also clear in that she would not include **Anita** in the numbers nor would she have put her on any of the rotas. I am satisfied, and so find, that **Anita** visited the care homes from time to time, when she wanted, under no sense of compulsion or obligation and without being directed to do so. She was not answerable to anyone in **SHNL** and she was not, in fact, answerable in any way even to **Arvan**. As she said in evidence, **Arvan** had said to her that she was the 'boss' and that she could do as she liked. Of course, she was not a 'boss' in the meaningful sense that this is understood in the workplace. She had no line management responsibility. She supervised no-one. She did not give instructions to anyone. What was meant, and what I find she perfectly understood by the reference to 'boss' was, that she was under absolutely no obligation to do anything. She was the wife of the owner (and regarded in her own right as being part of the ownership) and could do as she pleased. She went to Kenton Manor Care Home, I find, because it was beneficial to her and she was genuinely interested in finding

out more about the sort of care provided, in particular, dementia care. One of the things she did was to complete an emergency first aid at work course on **04 May 2023 [pages 491-494]**.

166. **Anita** liked to do meet with staff and patients. She found this therapeutic after her period of illness and benefited from it considerably. She visited Kenton Manor and two other homes. She was under no obligation when there. She enjoyed the experience of meeting caring people and seeing people being **cared** for and especially liked to greet new resident arrivals. I have no doubt that Anita is a caring person and that if she saw anything of concern she would have reported it to **Arvan** or even raised it with a member of staff there. However, there is no evidence of this ever having happened. She was willing to and did offer her advice and opinion on matters such as flower arranging and décor but as **SM** confirmed, they do not have a need to engage anyone specifically to advise on such matters. I must make clear that I am sure **Anita's** contributions would have been valued and welcomed and, in no way, must they be diminished.

167. However, none of activity had any benefit or relevance to **SHNL**, which was not involved in the running or staffing of care homes (save that it managed some back-office functions for **Solehawk** and **Popular**). As much as **Neeraj** suggested that it was not unusual for people to work across groups, this did not extend to matters such as advising on flower arrangements and décor or attending to reception work. **SHNL** was not paying **Anita** in return for any service to it or to **Solehawk** or **Popular**. Those companies employed and paid for receptionists and care staff. To the extent that **Neeraj** implied in his witness statement that this was a case of one group company using the services of an employee in another group company I reject this. **Anita's** reference to her attendance at the care homes as a volunteer was apt. I repeat: that is not to say that what she did was not valuable or beneficial. She took time to talk to residents, and to staff and, I have no doubt at all, that she did so with good and noble intentions and in a caring manner. However, she did this entirely of her own volition and, indeed from a position of privilege, having access to the care homes only because of who she was. To the extent that it was valuable work, it was not work for **SHNL** and not done under any contract with it. However, the payments she received from **SHNL** were not paid to her in return for

this work and would have been paid irrespective of her doing any work as they had been from the moment they were set up in **June 2017**.

168. **Anita** attended some of the leadership conferences with **Arvan** over the years.

Relevant law

Employees and workers under the Employment Rights Act 1996

169. Section 230 ERA 1996 provides 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 or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(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 client or customer of any profession or business undertaking carried on by the individual …

170. Those who are not employees but fall under section 230(3)(b) are often referred to as 'limb (b) workers' and working under a 'worker contract'.

Employees under the Equality Act 2010

171. Section 83(2) EqA provides that

'employment' means:

(a) Employment under a contract of employment, a contract of apprenticeship or a contract personally to do work …

172. Although worded differently to the 'limb (b)' worker definition, this extended definition in section 83 is treated as amounting to the same thing: see **Bates van Winkelhof v Clyde & Co LLP** [2014] UKSC 32, paras 31-32. That is common ground between counsel.

173. A number of cases have examined the question of employee and more recently worker status at the very highest level. The most recent Supreme Court decision is that of **Uber BV and others v Aslam and others** [2021] I.C.R. 657. This looked, in particular, at the question of limb (b) worker contracts.

174. In considering section 230(3)(b) ERA, it is necessary to determine, as a matter of statutory interpretation, whether a person falls within the definition of a 'worker', irrespective of what has been contractually agreed between the parties. In carrying out this exercise, it is necessary to have regard to the purpose of the statutory provisions and to interpret the language, so far as possible, in the way that best gives effect to that purpose, namely to protect vulnerable workers, who were in a position of subordination and dependency in relation to a person or an organisation which exercised control over their work.

175. In **Uber**, Lord Leggatt stated @ para 87:

"In determining whether an individual is a 'worker', there can, as Baroness Hale DPSC said in the Bates van Winklehof case [2014] I.C.R. 730, para 39, "be no substitute for applying the words of the statute to the facts of the individual case." At the same time, in applying the statutory language, it is necessary both to view the facts realistically and to keep in mind the purpose of the legislation … As also discussed, a touchstone of such subordination and dependence is (as has long been recognised in employment law) the degree of control exercised by the putative employer over the work or services performed by the individual concerned. The greater the extent of such control, the stronger the case for classifying the individual as a 'worker' who is employed under a 'worker's contract'."

176. His Lordship went on to state in paragraph 88: "*it is also necessary to have regard to how relevant obligations are performed in practice*."

Contract with the employer

177. Although the question whether an individual is an employee or worker is a matter of statutory interpretation, **Uber** does not mean that the question of whether someone is a worker or employee has become purely one of status with no role at all for contract. An individual cannot be an employee or a worker unless there is a contract of some kind.

178. A contract may be express (in writing or oral) or implied. There must be an agreement (usually consisting of an offer which is then accepted) made between two or more people, the agreement must be made with the intention of creating legal relations and the agreement must be supported by consideration — i.e. something of benefit must pass from each of the parties to the other. Moreover, there must be mutuality of consideration. It is not enough for one party to provide a benefit. There must be a promise in return: see **Prior v Millwall Lionesses Football Club** EAT/341/99, per Burton J @ para 9. For a contract to exist at all, the parties must be under some obligation towards each other.

179. In the absence of a written contract, the legal relationship of employee or worker may be inferred from the conduct of the parties, considered in its relevant factual and legal context.

180. There must be something from which a contract can properly be inferred: **Stephenson v Delphi Diesel Systems Ltd** [2003] I.C.R. 471 @ para 12, per Elias J.

Contracts of employment

181. The approach to determining whether a contract is one of employment is, it is now accepted, the multi-factorial approach. The case of **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2QB 497 especially @ 515) remains as authoritative guidance. It is not, however, the last word: see **Dakin v Brighton Marina Residential Management Company Ltd** UKEAT/0380/12/SM, para 8 where Langstaff P stated on the subject of 'control':

"Thirdly, the employee must be subject to the control of the employer at least insofar as there is room for such control. It may need to be emphasised that it is the power to control which is essential; the demonstrated exercise of control is not, though it may be evidence that there is the power of control and without it there may be some suggestion that there is no such power."

182. Control is a necessary but not a sufficient condition for the existence of an employment relationship: **Ready Mixed Concrete Ltd v Minister of Pensions and National Insurance** [1968] 1 ALL ER 433. When all other relevant factors are considered, a framework of control in a particular case may not be sufficient to establish employment.

Limb (b) worker contract

183. The elements required to satisfy the statutory definition of a worker under section 230(3)(b) of ERA 1996 are summarised by Lord Leggatt in paragraph 41 of Uber:

- There must be a contract whereby the individual undertakes to perform work or services for the other party.
- The individual must undertake to personally perform the work or services.
- The other party to the contract must not be the customer or client of any business undertaking or profession carried on by the individual.

184. Whether a contract is a "worker's contract" within the meaning of the legislation is not to be determined by applying ordinary principles of contract law. It is necessary to ascertain the true nature of the agreement and employment tribunals may disregard terms included in a written agreement (if such exist) where they do not reflect the genuine intention of the parties.

185. In paragraphs 12 and 13 of his closing written submissions, Mr Stephens very helpfully set out the hallmarks of an employment contract and a worker contract which I adopt. A person is an employee if:

- There was a contract between her and the putative employer.

- The contract contains mutual obligations related to work.
- The individual was subject to the power of control by the Respondent
- The individual has to perform the work personally
- The contract contains no terms inconsistent with contracts of employment

186. If all of the above factors other than the third are present, the individual is a worker.

Intention to create legal relations

187. It can often be difficult to state with any certainty at what point a legally binding contract of employment is made. When deciding whether there was an intention to create legal relations in an employment context, tribunals should avoid placing undue emphasis on the intentions of the putative employer, which might perceive an advantage in a finding that no contract existed. The matter should be assessed objectively, based on an analysis of all the relevant circumstances and context.

Consideration

188. In most cases, an agreement, even if it is made with the intention of creating legal relations, will not be binding on the parties unless it is supported by consideration. Consideration is something of value which passes between the parties when the contract is performed. The consideration for the employee's promise to work is generally the salary paid by the employer. Conversely, the consideration for the employer's promise to pay wages is the work done by the employee.

Submissions

189. All counsel provided written opening and closing submissions supplemented by oral submissions. In brief, the Respondent submits that the point that defeats the Claimants' claims in their entirety is that none of them had a contract of any sort with the Respondent. If wrong as to the existence of a contract, the Respondent contends that any such contract was neither one of employment or of work/services. It submits that they were not subordinate to the Respondent, were not controlled by the Respondent, worked on their own terms and came and went as they pleased. It submitted that they were not paid any wage or salary in

exchange for work done and that there was no mutuality in that the Respondent was not obliged to provide any particular amount or type of work and the Claimants were free to turn down any opportunities made available. To the extent that Shivani or Kiran might have been engaged under a contract in the past, it submitted that this had come to an end long before they were removed from payroll. The Claimants, on the other hand, submit that a contract of employment (or at least a limb (b) contract) is to be inferred from the way the parties conducted themselves and that the contracts persisted up until **June 202**3 when they were in effect dismissed.

190. Many other submissions were made. I intend no discourtesy by not setting them out in any more detail. To do so would add to an already lengthy judgment. I have referred to them where appropriate in these reasons. I have read them all carefully along with the commentary documents provided by Mr Stephens regarding the witness evidence.

Discussion and conclusions

191. Having set out my findings of fact, I now turn to my conclusions applying the law to those facts. I shall take each claimant in turn and consider separately whether they were employees or workers. Before doing so, however, I say at this juncture that I do not accept that the Respondent was estopped from denying the existence of a contract with **Shivani** or **Kiran** (as Mr Stephens submitted) or indeed **Anita** (to the extent that Mr O'Dair might be said to have adopted this submission. The Respondent did not act on an assumed state of facts or law. My overall conclusion is that – save in the case of Kiran up to 2009 - there was no express or implied contract in place. The payments made to the Claimants since then were dictated by family relationships and internal dynamics rather than a legal obligation to perform work.

C1 - Shivani

Was Shivani an employee within the meaning of section 230 ERA?

192. The following questions had to be answered (see **Dakin**, paragraph 8):

- Was there a contract between **Shivani** and **SHNL**?
- If so, did that contract contain mutual obligations related to work?
- Was Shivani subject to the control of SHNL insofar as there was room for such control? (it is the power of control that is key not its exercise)
- Was Shivani obliged to perform her work personally for SHNL?
- Did the contract contain terms which were inconsistent with its being a contract of employment?

Was there a contract between **Shivani** and **SHNL**?

193. It is common ground that there was no written contract. Further, there were no expressly agreed terms whether oral or in writing. I refer to my finding that there was never any agreement about what **Shivani** would be paid if she did any work. Nothing said about the nature of the work, days or hours of work, holidays, sickness, maternity and so on.

194. There being no express written or oral contract, I must consider whether there was an implied contract between **Shivani** and **SHNL**. Mr Stephens, supported by Mr O'Dair, submitted that I should infer the existence of a contract. Both counsel submitted that, when it comes to contracts of employment, the law did not require that it be 'necessary' to do so. Mr Cordrey submitted that 'necessity' was absolutely the test.

195. I am inclined to agree with Mr O'Dair and Mr Stephens that 'necessity' is not the test for determining whether there was an implied contract of employment (or for that matter, a contract of work) in place between the Claimants and the Respondent. The question for me is simply whether the claimants were employees (or workers). Yes, there must be a contract but, as counsel for the Claimants submitted, a contract may be inferred where the facts permit such an inference properly to be drawn. Although this is a preliminary hearing to determine the 'status' of the Claimants, it must be remembered that these are not common law claims. In the context in which I am considering the question (under employment protection and equality legislation) I do not understand the test of 'necessity' to apply. The

relevant statutory provision applies, and that requires a tribunal to ask whether there was an implied contract of employment in place not whether it was 'necessary' to imply such a contract.

196. Nevertheless, an express or implied contract there must be. It was common ground that for there to be a contract, the following constituent elements must be present:

- Offer and acceptance
- Consideration.
- Certainty.
- Intention to create legal relations

Offer and acceptance

197. I accept, as submitted by counsel for the Claimants that whilst there is a need for an offer and an acceptance, this does not require the identification of a formal sequential process of offer and acceptance. I was referred to the case of the **Eurymedon** [1975] A 154 at 167E, per Lord Wilberforce. I accept that an offer and an acceptance may be inferred from the facts and context. The passage from the **Eurymedon** to which I was referred, emphasised that English law – in having to apply a rather technical and schematic doctrine of contract - a takes a practical approach. It is clear that Lord Wilberforce regarded the contract under scrutiny in that case to be a promise by consideration as opposed to a gratuitous promise. His Lordship referred to the 'commercial reality' and the 'commercial character' of the arrangements and that given the reality and context, it was prima facie implausible to describe one set of promises as gratuitous. That case involved a commercial relationship, very different to the cases in these proceedings. However, in the context of employment and worker status, employment tribunals must also look at the reality of the situation.

198. In light of the facts a I have found them to be in **Shivani's** case and given the context in which she undertook work, it was not prima facie implausible to consider the payment of money through **SHNL** payroll as gratuitous. Indeed, I conclude that

that was the reality of the situation. The payments made to **Shivani** were gratuitous, in that they made whether she did any work or not. They were given to her without any expectation that she would do anything in return. It was open to her whether she would involve herself in the business to any extent at all. That was, I infer, always the understanding from the outset. There was never any discussion as to how much she would be paid or what she would do in return for payment. I do not infer from the from the facts and the familial context that there was an offer from **SHNL** to work for it in return for payment and I do not infer from the facts and the familial context any acceptance to any such offer from **Shivani**.

Certainty of terms

199. There has to be an agreement which has sufficient certainty to be enforceable. Again, I agree with Mr O'Dair that whilst the passage in Chitty (referred to in paragraph 42 of his written submissions) is in general terms true, it is enough to satisfy the requirement for certainty that an employer has a duty to provide and the employee to do a reasonable amount of work, as submitted in paragraph 43 of his submissions. The law tolerates a higher degree of uncertainty in employment law contexts: **Nethermere (St Neots) Ltd v Gardiner** [1984] I.C.R. 612 and **Dakin v Brighton Marin**a [2013] UKEAT/0380/12/2604. However, in the case of all three Claimants in these proceedings, in fact and reality, the Respondent was under no obligation to provide them with any work at all and they were under no obligation to do any work (this was the case for **Kiran** after **2009**). This, taken with the absence of any other agreed terms, militates against the existence of a legally binding contract.

Consideration

200. As regards 'consideration', counsel for the Claimants submitted that a contract may exist throughout a period of time even if the putative employee is not required to work throughout that time and that it was enough if she was required to work and worked when required. I was referred to **Clarke v Oxfordshire Health Authority** [1998] IRLR 125 @ paragraph 41. Again, I accept this as a matter of principle. I also agree with Mr Stephens that the argument that **Shivani** performed no work and had only ever been present in an observational capacity, was false

and should not have been maintained. As is clear from my findings, most of the work undertaken by **Shivani** was done in **2015** and **2016**, with limited involvement thereafter.

201. For a contract of any sort to exist there must be mutuality of consideration. I have considered my findings to see what obligations there were on each side. There was an expectation on **SHNL** (following the direction of **Arvan**) to pay the Claimants each month such amount as was dictated by him – or as the case may be, **Aran**. To that extent, there was an obligation on the part of **SHNL**. That was the only obligation. There was no obligation on the Respondent to provide any work. Nor was there any expectation that any work would be provided by **SHNL** or that if SHNL provided any work that **Shivani** would be required to do it.

Mutuality of obligation

202. It is not enough that there was a provision of a benefit to **Shivani** (in the form of monthly payments). The obligations must be mutual. I conclude that the payroll payments were not made in return for any express or implied promise by **Shivani** to work if required. Nor did **Shivani** promise (either expressly or impliedly) to work in return for payment to her. They were made simply as a means of channelling funds to a family member on the instruction of an owner. It so happened that money was paid through **SHNL** payroll but that did not need to be the case. Had it come from some other source this would, I infer have been of no concern to **Arvan** or **Aran** - as demonstrated by the fact that **Anita** had been paid through a partnership prior to going on to **SHNL's** payroll and the suggestion that all three claimants be moved from **SHNL** to **CHG** payroll when the issue of their status was eventually raised. Nor, I infer from my finding regarding Shivani's absence after the birth of her child, was it of any concern to her that payments were coming through **SHNL** payroll. From **Shivani's** perspective, although she contributed valuably to the business in the work that she did, this was not in return for any benefit but in order for her to learn and understand the family business. I accept the submission of Mr Cordrey in paragraphs 19 to 23 that:

- The level of payment was based on **Shivani's** position in the family hierarchy (see my finding in paragraphs 33 to 35).

- **SHNL** payroll was one of a number of potential mechanisms of paying her befits and money (see my finding in paragraphs 30 and 55).

- Payment was made to **Shivani** whether she performed work or not and were unconnected to any work that she did (see my finding in paragraph 104).

203. I do not infer from the facts and familial context conclude, that there was mutuality of consideration as between **Shivani** and **SHNL**. Indeed, I conclude that there was none.

Intention to create legal relations

204. The purported contractual relationship in these proceedings is between the Claimants and **SHNL**. It was common ground that to create a contract there must be a common intention of the parties to enter into legal obligations. It was further common ground between counsel that the burden of establishing an intention to create legal relations was on the claimants in these cases. However, I did not consider it helpful to approach this matter by considering where the legal burden lay. I reminded myself again that this was an exercise in statutory interpretation.

205. Where there is doubt regarding the creation of a legal relationship, the tribunal must determine the intention of the parties. The question is not whether there were any legal implications or consequence for either the Claimants or the Respondents. Rather it is whether the Claimants and the Respondents intended there to be any. It is an objective test and is bound up with the other features of offer, acceptance and consideration. The intention may be inferred where those other features of a contract are apparent. It may also help to consider the importance of the agreement to the parties. In that respect, it mattered not to **SHNL** whether **Shivani** did any work at all. There was no consequence or repercussion to any project or piece of work, or to the business if she failed to turn up or failed to do anything. There were other employees in place, with written contracts and job descriptions to perform the work that **Shivani** involved herself in. From **Shivani's** perspective it mattered not whether she produced a piece of work on any project or function within the business. There was no repercussion for her. The money that **SHNL** paid each

month would and did continue to be paid irrespective of any activity and was wholly unrelated to any work that she did or might do.

206. It was unimportant whether she was in a legal relationship with **SHNL** because the reality was that payment was dictated entirely by familial connections and decision-making. I accept that this is not a case like that in **Balfour v Balfour**. It is right that the relationship is with a sizeable commercial organisation. However, there was no commercial or market-rate consideration given to the amount of salary to be paid. There was no commercial or business logic or rationale that dictated why **Kiran** should receive considerably more than **Shivani** or why either should be paid when they were not providing any services to the company (in **Kiran's** case for over a decade). It was the familial ties and the familial ties alone that explained her involvement and payment. None of the Claimants needed to be in a legal relationship with **SHNL** in order to benefit financially. This largely explains why **Shivani** expressed no interest in obtaining a written contract of employment at the time **PW** was putting in place new governance measures and why she referred to herself as a pharmacist to doctors when she was pregnant and not as an employee of **SHNL**. She never felt any need to tell anyone in HR or payroll that she was absent on maternity leave or that she would not be available for work or that she required extended leave. For its part, no-one at **SHNL** never queried where she was, or what tasks she was doing.

207. There were no mutual obligations between **Shivani** and **SHNL**. She was not bound to do any work for it, nor did she consider herself so bound. (see my findings in paragraphs 98, 100, 102 to 104).

208. Although there is a greater degree of tolerance in respect of 'certainty' of terms in the field of employment, there were no terms whatsoever agreed between **Shivani** and **SHNL**. The whole arrangement regarding her involvement was vague from the beginning to the end. The more vague and uncertain an arrangement the less likely it is that there was an intention that it be legally binding.

209. I conclude that the arrangement made for **Shivani** was that she would be paid a sum of money through **SHNL** payroll and other benefits, such as a car without any obligation. She was free to involve herself in the business as much or as little as she wished or not at all. It was an arrangement made in the private family domain. Although it is perfectly feasible (and not uncommon) for family members to be employed in a family business under a contract of employment (or a contract personally to do work), in my judgement, this was not such a case. The explanation for the payment of salaries through payroll in these cases is that this was done as a family arrangement on the say so of **Arvan** and **Aran**. No one else in the business, outside the family, saw it as being their position to challenge anything that the owners said or did.

Conclusion: no contract

210. Considering all of the facts and having regard to the context, I conclude that there was no intention to create legal relations between **Shivani** and **SHNL**. This was, I conclude, a family arrangement within a close-knit family, one which she, nor others, ever anticipated would become unravel as it has. That **Shivani** did work and received money through payroll were relevant factors in considering whether there was an implied contract but they were not sufficient in light of all of the facts. The payments were made by reference to family status and wholly unrelated to work, responsibility, time, value, demands or any of the things one would ordinarily expect to be factored into the payment of wages or salary. The reality is that **SHNL** payroll was simply a vehicle for the channelling of payments which, in my judgement, could and would have been made in some other way had a decision of the kind made by the board on **05 July 2022** been made many years earlier.

211. Having concluded that there was no contract between **Shivani** and **SHNL**, her claims must fail are be dismissed. However, I went on to consider whether (were I to be wrong as regards the existence of a contract) she was employed under a contract of employment or a worker contract.

Contract of employment

212. Had I inferred the existence of a contract in **Shivani's** case, the essential question would then have been whether she had been employed under a contract

of employment. The parties' views of the relationship is of some but limited relevance in this regard. It was put by counsel for the Claimants that **RW** and **RA** treated the Claimants as employees (or at the very least workers) and saw them as such otherwise they would not have paid them through PAYE and would not have placed them on furlough. I considered this as a factor in my assessment but concluded it to be insufficient to outweigh the other factors all of which pointed away from employment status. I was not satisfied and did not find that **RW** or **RA** (or other managers) did in fact consider the Claimants to be employees or workers working under a contract. The reality, as I have found it to be, was that no-one challenged what **Arvan** or **Aran** said or did. If they said put someone on payroll, it was done. No questions were asked. That does not equate to them (or **SHNL** corporately) regarding the Claimants as employees.

213. Much was said about Furlough. The fact that the Claimants were furloughed and that the company processed furlough payments through the CVJRS was also a factor that I considered. However, given the exceptional nature of the furlough scheme and the pandemic, I do not regard that as a particularly strong factor indicating an employment relationship. If anything, what explained the furlough payments was that they were on the payroll.

214. I also agree with counsel for the Claimants that the fact that the Claimants could take holidays when they liked or could work whatever hours they liked or could take whatever time off they wished does not, as a matter of law, negate the existence of a contract of employment. Such factors will be relevant factors in the overall assessment but no more than that. However, none of the usual indicia of a contract of employment were present in **Shivani's** case. She:

- did not receive induction,
- was not subject to any disciplinary rules or sanctions,
- was not required to notify the Respondent of any time when they were not working
- was not required to notify anyone of any sickness
- was not required to notify anyone of any holidays

- was not subject to any stipulated number of holidays in any leave year
- was not required to inform anyone of pregnancy or maternity leave
- was not required to be appraised,
- was under no supervision or control

215. Anything that **Shivani** did was a matter of choice on her part. For its part, **SHNL** was under no obligation to provide her with any work.

Control

216. Mr O'Dair urged me to avoid any 'euro-centric cultural assumptions' that businesses do not work in the way **Shivani** describes. I had to ask Mr O'Dair, during his closing submissions, to explain what was meant by euro-centric assumptions. He explained that **Shivani** had painted a picture of a particular way of carrying out and implementing a business on the part of a close-knit Indian family and that I should look at this as being an Indian cultural way of running a business. I prefer to avoid the dangers and pitfalls of making any kind of cultural assumptions, however described. The only proper approach is to apply the legal principles to the facts as I have endeavoured to do.

217. The power of control over what a worker does and how, when and where he or she does it is relevant to the question whether there is a contract of employment. Although it is the power of control that is key, it can be evidentially important to look for evidence of the demonstrable exercise of that power. **Shivani** relied on the close, domestic arrangements that were in place within the **Handa** household – as did the other Claimants. Thus, they say **Arvan** (as husband, father or father-in-law but critically as a director) gave them their direction or 'instruction' in the family home. It was said that **Arvan** decided that they would spend time in the business. It was submitted on behalf of the Claimants that this is why none of the normal structures of employment or worker contracts (such as those outlined above) applied to them. Mr O'Dair and Mr Stephens contended that there was, in essence, a two-tier workforce consisting of the other ordinary employees and the family-member employees. I do not accept that there was a two-tier workforce. The Claimants were, on my findings, not part of the Respondent's workforce at all.

218. Nonetheless, the Claimants submitted that **Arvan** was a director of the company and that he exercised or at least retained the power to control them and their work; that he could and did tell them what to do. However, I did not accept this on the evidence in respect of all three cases. I reject the submission by Mr O'Dair (paragraph 21 of his closing submissions) that the 'family was in reality line managed by the senior males'. There was no line management of the Claimants by **Arvan, Aran** or **Roshan** or by anyone else. That was not at all 'the reality'. I rejected the argument that **Shivani** was directed by **Arvan** and that he exercised control over her (paragraphs 100 to 104).

219. As observed by Langstaff P in **Dakin**, the exercise of control – or lack of it – will be of evidential value in considering the power of control. There was, on my findings, no sufficiently demonstrated exercise of control such that might be said to evidence a power of control over what **Shivani** did, whether she was required to do it or when she did it. To the limited extent that **Arvan** might have asked **Shivani** to go to a hotel or to involve herself in any project, he asked this as part owner of **SHNL** and other businesses, as a director and as her father-in-law. That he apparently told **Shivani** what to do over the breakfast table points, if anything towards any discussions regarding what she should do being in the context of ownership and family relations.

Integration

220. I considered as a factor to what extent **Shivani** was integrated into **SHNL**. My findings of fact reveal that with **Shivani**, there was greater 'integration' and activity on her part than in the case of **Anita** and **Kiran** (certainly in the latter's case, after **2009**). That greater degree of integration was balanced with her demonstrably clear total freedom to work or not to work. I concluded that, viewing all the facts realistically, her integration was still, in reality, largely explained by her status as a member of the **Handa** family and her free choice to involve herself in the business.

221. In light of my conclusions regarding the power of control, I am satisfied and conclude that **Shivani** – if she had any contractual relationship with **SHNL** – was not employed under a contract of service/employment.

222. Finally, I reminded myself of the passage by Dillon LJ in **Nethermere** (a case relied on by the Claimants) where at G-H page 634. I recognise that the existence of a contract of service/employment may be inferred from a course of dealing, continued between the parties over several years. However, I am unable to infer such a contract on the facts of **Shivani's** case. Although there was a course of dealing over some years, the critical or key feature in **Shivani's** case is that she was under no obligation at any time to do any work for **SHNL**. She had an unfettered right to work or not and to refuse to work if so requested.

Was Shivani a worker within the meaning of section 230 ERA?

223. As I have concluded there was no contract between **Shivani** and **SHNL**, it follows that I must also conclude she was not a worker within the meaning of the legislation. Again, had I found there to be a contract, the following questions would have to be answered to determine whether she was a worker:

- Did **Shivani** undertake to do or perform personally work or services for **SHNL**?
- Was the status of SHNL, by virtue of the contact, that of a client or customer of any profession or business undertaking carried on by **Shivani?** [there was no suggestion that this was relevant to any of the three cases]

224. The fact that an individual is a family member within a patriarchal or patrimonial arrangement does not, in any way, preclude them from being employees or workers. Further, as stated by the Supreme Court in **Uber BV v Aslam** [2021] I.C.R. 657, whether a person works under a 'worker' contract is not to be determined by applying ordinary principles of contract law. The Claimants are not seeking to exercise contractual rights. It is a question of statutory interpretation, in the course of which tribunals must give effect to the purpose of the legislation, namely, to give protection to vulnerable individuals who have little or no say over their pay and working conditions because they are in a subordinate and dependent

position in relation to a person or organisation. Tribunals are to focus on the practical reality of the relationship.

225. According to IDS, volume 3, Contracts of Employment, Chapter 2, para 2.133, "a key question is whether the relationship is one of subordination and dependence, having regard to the legislative purpose of protecting those who have little or no influence on the terms under which they work".

226. The answer to that question does not assist **Shivani**. She was not in a relationship of subordination and dependence with **SHNL**. Nor was **Anita** or **Kiran**. Mr Stephens and Mr O'Dair submitted that insofar as the Supreme Court spoke of the purpose of the legislation, that was not to say that a tribunal had to find in every case that a worker was in a position of subordination and dependence. It is simply that the statutory provision must be applied with that purpose in mind. On my reading of the authorities, the position is more nuanced. I must have regard to the purpose of the legislation as explained by Lord Leggatt when determining whether **Shivani** (and the other claimants) are workers. I agree this does not meant that it is necessary to conclude that a person **is** in a position of subordination and dependence before concluding that they are a worker. As observed by Baroness Hale in **Bates van Winkelhof**, subordination is not a freestanding and universal characteristic of being a 'worker'. However, the extent or degree of subordination and dependence will be a factor in the overall determination. As stated by Lord Leggatt in **Uber**: "*At the same time, in applying the statutory language, it is necessary both to view the facts realistically and to keep in mind the purpose of the legislation … As also discussed, a touchstone of such subordination and dependence is … the degree of control exercised by the putative employer over the work or services performed by the individual concerned. The greater the extent of such control, the stronger the case for classifying the individual as a 'worker' who is employed under a 'worker's contract*'"

227. Thus in the Uber case, the court looked at the measure of autonomy and independence of the drivers, noting that they were free to choose when, how much and where (within the territory covered by their private hire vehicle licence) to work.

Of course, in Uber, there was no suggestion of any umbrella contract – the case was that the drivers were 'workers' when they were working, not in between bouts of work during which they were under a continuing obligation to work. So to that extent, it is different to the cases before me. However, in paragraph 91, his Lordship added: "… *where an individual only works intermittently or on a casual basis for another person, that may, depending on the facts, tend to indicate a degree of independence, or lack of subordination, in the relationship while at work which is incompatible with worker status*."

228. It is notable that, although the Uber drivers had a measure of autonomy and independence as set out above, an important consideration in favour of worker status was that Uber determined the price charged to passengers and were responsible for defining and delivering the service provided and the fee paid to drivers. Contractual terms were dictated by Uber, not the drivers. Although drivers were free to choose when and where to work, once a driver logged on, his choice about whether to accept requests for rides was constrained by Uber. The company also monitored the driver's rate of acceptance and cancellation of trip requests. It also exercised a significant degree of control over the way in which drivers delivered their services, vetting the type of car that may be used and dictating the technology used.

229. Of course, it is not a case of simply holding up a mirror of the cases, so to speak, and comparing whether the facts in one case are the same as in another. The Uber case is factually very different to those of the Claimants in these proceedings. However, the analysis of those facts as carried out by the Supreme Court is informative. Having analysed the facts in these cases, it is evident that **Shivani** worked on an intermittent basis and then stopped doing any work when she became a mother. Unlike the usual scenario involving intermittent workers, she was paid continuously irrespective of this. However, even allowing for that constant, when taking the intermittent and then diminishing nature of her involvement alongside my findings of complete or near complete autonomy and her ability to do as she pleases, there was in my judgement such a substantial lack

of subordination in her case to make this a strong factor pointing against worker status. Taking the facts as a whole, I conclude that she was not a worker.

230. **SHNL** was used as a device to pay money to the Claimants in the form of a wage and not in return for any work. As far as the Claimants were concerned, it could as easily have been the payroll of **CHG,** or **Solehawk**, or **Popular** or any other family company that provided this money. It would not have mattered to them or affected what they did or did not do. **SHNL** was, I conclude, merely the vehicle. It may well be, as Mr O'Dair and Mr Stephens submit, that the 'family benefit narrative' only emerges when the conflict between the two sides of the family begins. However, the 'family benefit' reality always existed. Upon the appointment of **PW**, the patrimonial approach was in its last days. Proper governance of a company could not allow for gratuitous payments to be made through payroll. Thus the decision (agreed by **Neeraj**) that those with defined roles, who worked in return for a salary, were to be provided with written contracts of employment.

231. In all the circumstances, therefore, I conclude that **Shivani** was not a worker within section 230 ERA.

C2 - Kiran

Was Kiran an employee within the meaning of section 230 ERA?

232. What I have set out above in paragraphs 193 – 203, 217 – 218 and 230 – 231 in respect of **Shivani** apply mutatis mutandis to **Kiran** in respect of the period after **2009**.

233. In **Kiran's** case I was presented with real factual difficulties in that the evidence regarding her activity was thin on the ground. There were factually two fairly distinct periods for the purposes of analysis:

- **2000 to 2009**

- **2010 to 2023**

234. Factually, the second period is straightforward. Leaving aside some intermittent involvement in **2011**, **Kiran** did not work for **SHNL** for a period of about 13 years. It was difficult to see how, based on those findings, she could claim to have been an employee or worker and to assert rights upon her removal from payroll in **June 2023**. For this reason, Mr Cordrey's secondary submission was that if Kiran had ever worked under a contract it came to an end many years before. He did not venture to suggest how, if there had been a contract, it came to an end: whether **Kiran** was dismissed or resigned. That seemed a difficult concept, given that she continued to receive pay (and pay increases) right up to the 2020s.

235. The first period of time (**2000 – 2009**) represented a time when there was some evidence (albeit limited) as to what **Kiran** did. I refer to my findings in this respect (paragraphs 107 to 110 above). It was not **Kiran's** case that she started on one contract (as a receptionist) and that this came to an end in **2009**, following which she worked under a different contract after moving to London. Nor was it her case that the contract she worked under while living in Newcastle was varied when she moved to London. Rather, it was her case that she worked under the same contract throughout, that she was engaged to carry out such duties as directed by the directors and shareholders of the company.

236. The same questions had to be answered in **Kiran's** case (see **Dakin**, paragraph 8):

- Was there a contract between **Shivani** and **SHNL**?
- If so, did that contract contain mutual obligations related to work?
- Was **Kiran** subject to the control of **SHNL** insofar as there was room for such control? (it is the power of control that is key not its exercise)
- Was **Kiran** obliged to perform her work personally for **SHNL**?

- Did the contract contain terms which were inconsistent with its being a contract of employment?

Was there a contract between **Kiran** and **SHNL**?

237. As in the case of **Shivani**, it is common ground that there was no written contract. Further, there were no expressly agreed terms whether oral or in writing. I refer to my finding that there was never any agreement about what **Kiran** would be paid if she did any work. Nothing said about the nature of the work, days or hours of work, holidays, sickness, maternity and so on.

238. There being no express written or oral contract, I had to consider whether there was an implied contract between **Kiran** and **SHNL** Mr Stephens submitted that I should infer the existence of a contract. As regards the period of time up to 2009, he submitted, in paragraph 29 of his closing written submissions, that she was on the rota and 'worked like a regular employee'. In paragraph 40-41, he submitted that from that fact and the fact that she was paid a salary with PAYE deductions, it is readily to be inferred that Kiran's relationship with **SHNL** was contractual. There was no countervailing evidence to displace that inference, he submitted. After she moved to London, he submitted that the contract persisted and that she continued to perform such work as directed by the Respondent up until **May 2023**.

239. However, in order to readily infer from the facts, that the relationship was contractual, I must be able to infer that the constituent elements of a contract were present.

Offer and acceptance

240. Although it was not possible to identify any formal sequential process of offer and acceptance, I considered that this was not at all fatal to the argument that **Kiran** and **SHNL** were in a contractual relationship. The fact that she worked regular shifts on reception and appeared on a rota was an indication that she had been offered the opportunity to work on reception and that she accepted this.

Certainty of terms

241. This was more difficult. As set out above, there has to be an agreement which has sufficient certainty to be enforceable. Even in this period back in **2000** to **2009**, there was no discussion as to how much **Kiran** was to be paid – indeed there was no evidence as to what she was paid and how much work she was to do. Nevertheless, it is enough to satisfy the requirement for certainty that an employer agrees to provide and the employee to do a reasonable amount of work. That was, the case when **Kiran** worked in reception. Although I was only able to infer the existence of a few basic terms: employment as a receptionist: commencement some time in 2000; agreement to work to a rota; some payment in return for this work, there was just about sufficient in my judgement to satisfy the requirement of certainty. I am satisfied that the placing of **Kiran** on a rota is sufficient evidence to warrant an inference that there was an accepted duty to provide her with some work at that time and that by working according to a rota that Kiran had agreed to do a reasonable amount of work as a receptionist.

Consideration

242. As regards 'consideration', counsel for the Claimants submitted that a contract may exist throughout a period of time even if the putative employee is not required to work throughout that time and that it was enough if she was required to work and worked when required.

243. Throughout the period of time that Kiran worked as a receptionist, there was just about enough evidence to enable me to infer that by placing her on the rota, she was required to work and for me to infer from the fact that she did work according to the rota, that she had agreed to work when required. There was, I infer, a promise to work the rota in return for payment and an equivalent promise to pay her for having worked according to the rota. I do not consider that, at that time, any payment to **Kiran** was solely because she was a family member. She was given the job because she was a family member, that is certain but that that

is not to the point. Although there is no evidence as to what pay was agreed, I agree with counsel for the Claimants that a tribunal cannot afford to be too hard-edged about this. Although I have received no evidence on the amount I infer that there had been an agreement back in **2000** to pay **Kiran** a reasonable sum for the work done..

Mutuality of obligation

244. As set out above, the obligations must be mutual. In the period **2000 to 2009**, there is sufficient evidence to enable me to infer that the payment to **Kiran** was made in return for an implied promise by her to work as a receptionist when required, according to the rota.

Intention to create legal relations

245. Given the extremely limited evidence regarding the creation of a contract and given the familial context to these cases, as with **Shivani**, there was some doubt as to the existence of a legally binding contract in **Kiran's** case. I refer to what I say in paragraph 204 - 205 above. As regards the importance of the agreement to the parties, there may have been a consequence or repercussion for **SHNL** if **Kiran** had failed to turn up for reception work to which she had been allocated by the rota. Although there was no evidence that she ever failed to turn up for a shift, it is a natural inference that had she done so, the reception would have been short-staffed. This would have had repercussions for the hotel and for **Kiran**, in that, had she no good reason for failing to attend, **SHNL** staff would have come under pressure and this may well potentially resulted in **SHNL** reception manager removing her from the rota or consider terminating her work as a receptionist. If a person is on a rota and they fail to attend work, it has obvious consequences for the employer. Whether that would have resulted in the cessation of future payments to **Kiran** is another matter.

246. In those circumstances, even though **Kiran** was the daughter of the owner and was simply given a job with **SHNL** without any normal recruitment exercise, my

findings are just about sufficient to lead me to infer objectively that there was an intention to create legal relations.

247. In summary, standing back and looking at the reality of the situation up to **2009**, I conclude that **Arvan** put **Kiran** on the payroll back in 1997 because she was a family member and he expected her to take an interest in and learn the family business. She did casual work up until about 2000. Having completed her education, **Kiran**, as a young, single woman with some previous familiarity of the Royal Station Hotel took up regular work as a receptionist. I infer from the conduct of **SHNL** putting her on the rota that she was offered the job of receptionist. I infer from the regular interaction between her and the hotel management (namely, regularly working full shifts according to a rota) that she impliedly agreed to accept this position. Although there was no evidence as to what she was paid, I infer that the monthly payment was made in return for agreeing to work as a receptionist. She may have dipped into some other areas by way of taking an interest in the business but that was not part of any defined contracted role. Essentially, I conclude from the facts that she had a job under contract as a receptionist.

248. By agreeing to attend work as a receptionist when required (according to the rota) she was not free to do as little or as much work as she chose. This was different to the case of **Shivani** (and to **Anita**). While she was part of a close-knit family business, that does not negate the existence of a contract. In **Kiran's** case there was a sufficient degree of mutual obligations: pay, provision of reception work and agreement to work on the rota. The familial context – though a significant factor – was not enough to warrant not drawing the appropriate inference that an implied contract existed.

249. The real problem with **Kiran's** case was that for all intents and purposes her involvement with the company (bar the limited period in **2011**) came to an end by **2010**. I do not accept Mr Stephen's submission that the contract persisted beyond **2009**. I address this below. However, before doing so, I need to consider whether the contract which I have, by inference, found to exist from **2000** to **2009** was a contract of employment.

Contract of employment

Did the contract contain mutual obligations related to work?

250. The mutual obligations that I have found to exist in order to warrant the conclusion that there was a contract between **Kiran** and **SHNL** were obligations related to work, namely the agreement to work as a receptionist, the agreement by **SHNL** to provide her with work (by placing her on the rota) and an agreement to pay her in return for committing to the rota.

Was **Kiran** subject to the control of **SHNL** insofar as there was room for such control?

251. From my findings, I conclude that, from **2000** to **2009**, **Kiran** was subject to a sufficient degree of control by **SHNL**. This comes back to the matter regarding the rota. It is a natural inference to draw that if a manager is allocating work to an individual by placing them on a rota, that the manager retains the power to control the time at which the individual works. That is the inference I draw in **Kiran's** case. Further, as she was working alongside the reception manager and was part of a reception team, I infer that there existed a power of control over the type of duties she would and did perform within that team.

Was **Kiran** obliged to perform her work personally for **SHNL**?

252. I regard this as fairly uncontroversial. Mr Cordrey submitted that none of the Claimants was obliged to do any work. However, this was in context of his submission that there was no contractual relationship at all. Having inferred the existence of a contract in **Kiran's** case in the period **2000** to **2009**, the question of personal service arises in a different context. **Kiran** worked as a receptionist. She could not send someone else to work for her. This was obviously not a case where a worker had the power of 'substitution'. Therefore, the answer to the question is that yes, **Kiran** was obliged to perform her work as a receptionist personally.

253. I also conclude from the fact that she was part of a reception team rota, that she was sufficiently integrated into the work of **SHNL** at the Royal Station Hotel.

Did the contract contain terms which were inconsistent with its being a contract of employment?

254. It is right to say that when working as a receptionist in Newcastle, **Kiran** did not have the usual terms that one would expect in an employment relationship. Referring back to paragraph 214 above, bullet points 1, 2, 6, 7 and 8 equally applied to her back in **2000 to 2009**. However, the same cannot be said of bullet points 3,4,5 and 9. There was sufficient evidence (the rota) to justify a further inference that she did have to notify reception if she was not going to be available and that she was under some sufficient degree of supervision or control. More importantly, it was not suggested that there were any inconsistent terms. The Respondent's position was after all that there were no terms. Whilst it is right that none of the other terms one would normally associate with a contract of employment could be established (holidays, sick pay etc) this was not fatal to employment status. There must be terms inconsistent with a contract of employment. There was none.

255. Therefore, my conclusion is that in the period **2000** to **2009**, **Kiran** worked under a contract of employment with **SHNL**. That was, in my judgement, the reality of the situation during that period.

Termination of contract of employment

256. In as much as it is possible to infer the creation or existence of an implied contract (or employment or otherwise) it is possible to infer its termination by conduct. Actions indicating a clear intention to end the employment relationship may amount to effective termination, especially when those actions are clear and unequivocal.

257. After her marriage and move to London, **Kiran** left her job as a receptionist with **SHNL**. For its part, **SHNL** stopped assigning her any work and, save that she continued to receive regular monthly payments, there was no continuing contractual relationship with mutual obligations. There was no suggestion of **Kiran** transferring to work in another hotel in the south of the country. She simply stopped working for **SHNL** when she moved from Newcastle. I recognise that she was involved in some work in **2011** but this was over a year after she had last worked as a receptionist.

258. I conclude that this work in **2011** was not anything done under any contractual obligation. By then, she was married, living in or near London and hoping to start a family. The continued monthly payment through PAYE was simply a means for her father to provide her with some means without any obligation on her part. She became pregnant with her first child in **2011**, following which she undertook no work for **SHNL**. Her actions in doing no work at all for **SHNL** from summer **2011 to June 2023** is, I conclude, clear and unequivocal. She had effectively communicated the termination of the implied contract of employment that had previously existed by leaving her position as a receptionist in Newcastle and moving to London and by doing no work in the whole of **2010** clearly indicated that she no longer intended to uphold the contractual relationship. What I have set out in paragraphs 204 – 209 above in the case of **Shivani**, under the subject 'intention to create legal relations' applies equally to **Kiran's** case after **2009**. Although a contract had been in existence up until then, she had clearly evinced, so to speak, an intention not to continue legal relations as a contracted receptionist. When in **July 2022** she asked to be 'added back as staff' this was solely to obtain a reduced rate (paragraph 136 above). I infer from her request that she recognised that she was not 'staff'. That is unsurprising given that she had undertaken no work in over a decade. I refer back to my findings following my analysis of her activity in the years **2010 to 2023** (paragraphs 112 to 138 above).

The continued payment of salary to Kiran from 2011 to 2023

259. Clear as I was that **Kiran** had stopped doing any work and had 'checked out' of the business in **2009** (and at the absolute latest in **2011**) effectively terminating her contract of employment as a receptionist, what was it, I asked myself, that explained the money she received from that point, year in and year out. Referring back to my findings (and especially paragraph 138 above) I infer that, from the time she was pregnant with her first child, **Kiran** withdrew entirely from doing any kind of work in the family business. She continued to receive money through the payroll but this was not in return for any work. She did not regard herself as an employee or a worker. She was a member of the owning family and her father had simply used the existing payroll setup to provide for her to receive money. That was the reality. This explains why **Arvan** used **SHNL** payroll so casually, such as the instructions to **DB** to ensure that **Kiran** and **Komal** received equal payments and the instructions to pay her one-off amounts and to make deductions in subsequent months (see my findings in paragraphs 140 to 144). None of this can sensibly be related to any work or mutual contractual obligations. It was entirely gratuitous. It also explains the discussions regarding payment of dividends and transferring her from **SHNL** payroll to **CHG** payroll. The company payroll was simply a mechanism of providing her with money as his daughter. It was known and understood by **Arvan, Aran, Neeraj, Kiran herself and RW, AS** and **DB** that **Kiran** was and had been for a very long time a 'non-working family member', meaning that it was known and understood that the payments she received each month were not in return for any obligation to work or any agreement to work when required. They were paid simply because she was a family member.

260. I was satisfied that no new contract came into existence after **Kiran** moved from Newcastle. **Kiran** did not undertake any work in return for any payment. In any event, this had not been her case. Her case was that she had always been employed to do whatever work she was required to do (not limited to reception work) and that this endured right up to **2023** in that she did work as and when required – a case I rejected as wholly out of keeping with the reality. The payments made to her through payroll after she left her receptionist role in Newcastle back in **2009** were made simply because she is the daughter of **Arvan**. They were not paid in the course of or under any ongoing contractual relationship. To suggest that she

remained in a contractual relationship for over a decade without working is simply and wholly unrealistic. It had become a purely familial arrangement.

261. I accept the submission of Mr Cordrey in paragraphs 19 to 23 (in respect of all the period after **2009**) that:

- The level of payment was based on **Kiran's** position in the family hierarchy (see my finding in paragraphs 33 to 35).

- **SHNL** payroll was one of a number of potential mechanisms of paying her money (see my finding in paragraphs 140 to 145).

- Payment was made to **Kiran** whether she performed work or not and were unconnected to any work that she did (see my finding in paragraph 259).

262. As at the date **Kiran** was removed from payroll in **2023** and for more than 12 years before then she was not employed under a contract of employment or work. There was no contractual relationship at all. There was no power of control. She was not in any subordinate or dependent position. She was simply being channelled funds through the convenient mechanism of **SHNL's** payroll. That had been the reality for well over a decade.

263. In light of my conclusions, **Kiran's** claims must be dismissed.

C3 - Anita

Was Anita an employee within the meaning of section 230 ERA?

264. Of the three cases, **Anita's** was the most straightforward. What I set out above in paragraphs 193 – 210, 217 – 219, 221 - 231 in respect of **Shivani**, applies mutatis mutandis to **Anita**.

Was there a contract between **Anita** and **SHNL**?

265. As with the other Claimants there were no expressly agreed terms whether oral or in writing. No-one could point to any express offer and acceptance in **Anita's** case and it was yet again a question of whether a contract could be implied or inferred. Again, this meant that I would have to infer the presence of the constituent parts of a contract of employment.

Offer and acceptance

266. In light of the facts a I have found them to be in **Anita's** case and given the context in which she undertook any work, it was not prima facie implausible to consider the payment of money through **SHNL** payroll as gratuitous. She maintained that she had always worked for **SHNL** – for many years before **2019**. However, if she did anything before then, it was not in return for payment by **SHNL**. That did not lend itself to an inference that **SHNL** had offered her work in return for payment, nor did it lend itself strongly to an inference that she had accepted an offer of work in return for payment. I refer to my findings in paragraphs 28-29 and 154 above where there discussion is about tax. This demonstrates the casualness with which the 'payroll' was regarded as a potential means to benefit family members. She was added to payroll not following any offer of employment or acceptance by her but as a device (see paragraph 269).

267. As in the case of **Shivani**, and as in the case of **Kiran** after **2009**, that the reality of the situation was that the payments made to **Anita** through **SHNL** were gratuitous, in that they made whether she did any work or not. They were given to her without any expectation or obligation on her part that she would do anything in return. I do not infer from the from the facts and the familial context that there was an offer from **SHNL** to work for it in return for payment and I do not infer from the facts and the familial context any acceptance to any such offer from **Anita**. Indeed, I as satisfied and conclude that there was none.

Certainty of terms

268. There were no expressly agreed terms of work in **Anita's** case either. the Respondent was under no obligation to provide them with any work at all and they were under no obligation to do any work. This, taken with the absence of any other agreed terms, militates against the existence of a legally binding contract. I refer back to my findings that Anita was extremely **vague** as to even the most basic terms, including what work she was required to do (paragraphs 156 to 157 above) and that some of the examples she gave pre-dated her going on **SHNL's** payroll.

Consideration and mutuality of obligation

269. I do not accept (para 65 of Mr O'Dair's submission) that **Anita** promised (expressly or impliedly) to provide such services as she could reasonably be expected to provide upon request by her husband or if the need reasonably arose. That is not consistent with my findings of fact. Nor does it reflect the reality of the situation. I can readily understand why, **AS** did not read the email from **Arvan** as him requesting - or even directing – that **Anita** be given a job or a role but as a simple instruction to pay her money through the **SHNL** account (see paragraph 155). In my judgement that is precisely what it was: an instruction that the **SHNL** account be used as the vehicle to pay **Anita** a monthly sum of money without any expectation on **Anita** to have to work for that money. It is notable that **AS** asked if **Renu** should be added too. This clearly indicates her understanding that it was a matter of routine and nothing to do with contracts or obligations to work.

270. There was no need for **Anita** to do any of the work or engage herself in any of the activities that she did to receive any payment. Nor did I accept or find that her husband, **Arvan**, requested or expected her to do anything. I refer to my findings regarding **Anita's** health and how she came to attend Kenton Manor Care Home, This was seen by **Arvan** and by her as being beneficial to her to have some outside interest. **Anita** was genuinely interested in attending Kenton Manor and, I have no doubt, was liked by those she came into contact with. Going to the Care Home and meeting people in an environment where people were being cared for was good for her. But she was under no obligation to do it and I am unable, on the evidence, to infer any promise on her part to do any amount of work in return for any payment.

Indeed I am satisfied that it was unconnected with any payment, which was made and would have continued to be made whether she attended Kenton Manor or not. **Arvan** was not called to give evidence that he gave **Anita** any direction, or that he **appointed** her or that he requested her to do anything in return for any payment. He might have been in a position to support the case that was advanced on her behalf but he was not called. Further, I remind myself of **Anita's** evidence was to the effect that she could do as she liked, as she was the boss.

271. There was an expectation on **SHNL** (following the direction of **Arvan**) to pay **Anita** (as in the case of the other Claimants) each month such amount as was dictated by him – or as the case may be, **Aran**. To that extent, there was an obligation on the part of **SHNL**. That was the only obligation. There was no obligation on the Respondent to provide any work. Nor was there any expectation that any work would be provided by **SHNL** or that if SHNL provided any work that **Shivani** would be required to do it.

272. As in the other cases, it is not enough that there was a provision of a benefit to **Anita** (in the form of monthly payments). The obligations must be mutual. I conclude that the payroll payments were not made in return for any express or implied promise by her to work if required. **Anita** had been paid through a partnership prior to going on to **SHNL's** payroll. I repeat what I say above in regarding the submission of Mr Cordrey in paragraphs 19 to 23 that:

- The level of payment was based on **Anita's** position in the family hierarchy (see my finding in paragraphs 33-35).

- **SHNL** payroll was one of a number of potential mechanisms of paying her money (see my finding in paragraphs 54-55 and 154-155).

- **Anita's** work or involvement took place whether or not payments were made to her by **SHNL** (see my finding in paragraphs 156-157).

- Payment was made to **Anita** whether she performed work or not and were unconnected to any work that she did (see my finding in paragraphs 156-157 and 167).

273. I do not infer from the facts and familial context conclude, that there was mutuality of consideration as between **Anita** and **SHNL**. Indeed, I conclude that there was none.

Intention to create legal relations

274. In terms of the importance of the agreement to the parties, it mattered not to **SHNL** whether **Anita** did any work at all. There was no consequence or repercussion to work, or to the business if **Anita** failed to turn up or failed to do anything. There were other employees in place, with written contracts and job descriptions to perform the work that **Anita** involved herself in. From **Anita's** perspective it mattered not whether she attended work or whether she did anything. There was no repercussion for her. The money that **SHNL** paid each month would and did continue to be paid and was wholly unrelated to any work that she did or might do. I refer to my findings in paragraphs 156 to 162.

275. It was unimportant whether she was in a legal relationship with **SHNL** because the reality was that payment was dictated entirely by familial connections and decision-making. There was no commercial need for **SHNL** to recruit her. There was no commercial or market-rate consideration given to the amount of money to be paid to her. **Anita** did not need to be in a legal relationship with **SHNL** in order to benefit financially. She did not feel the need to – nor did she in fact need to – tell anyone that she was not able to attend work when her health was poorly. It was of no consequence whether she did or not.

276. There were no mutual obligations between **Anita** and **SHNL**. She was not bound to do any work for it, nor did she consider herself so bound. (see my finding in paragraphs 165 to 167). The arrangement made for **Anita** to be paid a sum of money through **SHNL** payroll and other benefits, such as a car was made by **Arvan**

without any obligation on **Anita's** part to do anything and without obligation on SHNL's part to provide any work. She was free to come and go as she wished or not at all. It was an arrangement made in the private family domain. The suggestion that she was required to work when asked in return for which she was paid a monthly wage was detached from reality in my judgement.

Conclusion: no contract

277. That **Anita** did some work and received money through payroll were relevant factors in considering whether there was an implied contract but they were not sufficient in light of all of the facts. The payments were made by reference to family status and wholly unrelated to work, responsibility, time, value, demands or any of the things one would ordinarily expect to be factored into the payment of wages or salary. The reality is that **SHNL** payroll was simply a vehicle for the channelling of money. Considering all of the facts and having regard to the context, I conclude that there was no intention to create legal relations between **Anita** and **SHNL**. It was purely a family arrangement.

278. Having concluded that there was no contract between **Anita** and **SHNL**, her claims must fail are be dismissed. However, I went on to consider (were I to be wrong as regards the existence of a contract) employment and worker status.

Contract of employment

279. As in **Shivani's** case, the essential question would then have been whether **Anita** had been employed under a contract of employment. The parties' views of the relationship is of some but limited relevance in this regard. I repeat what I say above about the Respondent's view of the relationship. As for **Anita**, she considered herself to be volunteering her services. One must be careful about attaching a label such as 'volunteer'. A person may be a volunteer yet still work under a contract (or employment or work). It is not so much the label that matters in Anita's case. It is what she understood by using that phrase. In my judgement, she used the word because she did not personally consider that she was under any contractual obligation to turn up for work or to do any work for **SHNL** in return for payment. Receiving payment through payroll was simply something that was done in order to provide some regular payments. I conclude that **Anita** perfectly

understood this. Her involvement in the care homes was entirely unrelated to these payments.

280. As with **Shivani** of the usual indicia of a contract of employment were present. **Anita**:

- did not receive induction,
- was not subject to any disciplinary rules or sanctions,
- was not required to notify the Respondent of any time when she was not working
- was not required to notify anyone of any sickness
- was not required to notify anyone of any holidays
- was not subject to any stipulated number of holidays in any leave year
- was not required to inform anyone of pregnancy or maternity leave
- was not required to be appraised,
- was under no supervision or control

281. She did compete an emergency first aid course and I factored this in the overall determination. However, critically, anything that **Anita** did – including the course - was a matter of choice on her part. For its part, **SHNL** was under no obligation to provide her with any work.

Control

282. I repeat what I say regarding **Shivani** under the subject of control. There was no line management of the **Anita** by **Arvan, Aran** or **Roshan**. That was not at all 'the reality'. I rejected the argument that she was directed by **Arvan** and that he exercised control over her (see my findings in paragraph 165).

Integration

283. I considered as a factor to what extent **Anita** was integrated into **SHNL**. I do not consider that the fact that she had an **SHNL** email address was sufficient evidence of her being 'integrated into the business'. Nor do I accept that the

invitation to training events or senior leadership conferences (for which there was an open invitation to all family members) was evidence of her integration [**page 323**]. Invites were generated automatically because she was on the payroll and as I have set out in my findings, **Anita** did not do any of the training (paragraph 159) nor did she have any appraisal or review meeting with anyone. In light of my conclusions regarding the power of control, I am satisfied and conclude that **Anita** – if she had any contractual relationship with **SHNL** – was not employed under a contract of service/employment.

Was Anita a worker within the meaning of section 230 ERA?

284. As I have concluded there was no contract between **Anita** and **SHNL**, it follows that I must also conclude she was not a worker within the meaning of the legislation. Again, had I found there to be a contract, the following questions would have to be answered to determine whether she was a worker:

Did **Anita** undertake to do or perform personally work or services for **SHNL**?

285. As I set out above under **Shivani's** section, **Anita** was not in a relationship of subordination and dependence with **SHNL**. **Anita** worked on an intermittent basis. She was paid continuously. However, given her complete autonomy and her ability to do as she pleased, there was also such a lack of subordination in her case that militated against a conclusion of worker status.

286. I refer back to my conclusion that the payroll was used to channel gratuitous benefits to the Claimants and that **SHNL** was used as a device to pay money to the Claimants in the form of a wage and not in return for any work.

287. In all the circumstances, therefore, I conclude that **Anita** was not a worker within section 230 ERA.

288. The claims brought by **Anita** are dismissed.

In summary, for all three claimants:

289. No express terms were agreed. There was never, in the case of **Shivani** and **Anita** a contractual relationship. Any contractual relationship that existed between **Kiran** and **SHNL** came to an end many years ago. All the claimants had complete autonomy and independence in practice (in **Kiran's** case after **2009**). They were free to choose when, how much and where to work. They were not, in any way, dependent on **SHNL** providing work or making work available to them in return for an income. The payments they received bore no relation to anything they did. They not objectively obliged to do anything under any contract and they and others did not, subjectively regard themselves as being so bound. Nor, on an objective analysis were they in any way bound. Any ties and sense of obligation were to each other as family members – until the family rift developed.

Employment Judge Sweeney

Date: 19 June 2024