EMPLOYMENT TRIBUNALS

Claimant: Mr A Ali

Respondents: 1. Clearwater Solicitors Ltd
2. Mohammed Mahrouf Yaqua
3. Shafaqat Ali Khan

Heard at: Manchester (by CVP) **On:** 29 October 2024

Before: Employment Judge Shotter (sitting alone)

Representatives
For the claimant: In person
For the respondent: Mr McFarlane, counsel

JUDGMENT ON RECONSIDERATION APPLICATION

The judgment of the Tribunal is:

1. The claimant's application for a reconsideration hearing to set aside the judgment and reasons promulgated on 13 March 2024 is dismissed in part and the original judgment confirmed in relation to the 21 April 2021 Business Agreement and its effect.

2. The judgment is varied in respect of the oral agreement entered in to between the parties, at paragraph 17 and 19 of the Judgment and Reasons promulgated on 13 March 2024 to the effect that the terms of the employment contract under which the claimant was employed from the 1 October 2021 to 25 March 2025 and whether those terms have been breached and/or the claimant suffered an unlawful deduction of ages, will be decided at a final hearing.

3. The Reasons sent to the parties on 13 March 2023 are varied at paragraphs 1, 7, 17, 19 and 21 as set out in the amended Reserved Judgment and Reasons redated November 2024.

REASONS

1. This is a preliminary consideration of the claimant's application for a reconsideration, the Tribunal having struck out his claims for breach of contract and unlawful deduction of wages. This judgment did not affect the complaint of unlawful disability discrimination which will proceed to a final hearing listed for 6 days commencing on 26 August 2025.

2. As at previous hearings reasonable adjustments have been made for the claimant in accordance with the Equal Treatment Bench Book by way of breaks whenever he has requested one, and on one occasion suggested by myself to give the claimant time to make sure he has covered all of his points in submissions.

3. At this reconsideration hearing I have taken the claimant's arguments at their highest in order to consider whether it was in the interests of justice to revoke the judgment and order the claimant to pay a deposit as a condition of continuing with his claims having been invited to do so by the claimant. I have concentrated on the claimant's main arguments distilled from his application for a reconsideration and oral submissions in order to establish whether it is in the interests of justice to confirm, revoke or vary the judgment on the basis of the claimant's arguments including new evidence which has come to light following disclosure. This new evidence has been inserted in the bundle for reconsideration consisting of 540 pages. I have also taken into account the respondent's written response to the application, oral submissions made by Mr McFarlane and case law, which I do not intend to repeat in their entirety.

<u>The claimant's reconsideration application dated 27 March 2024</u>

<u>Submission ground 1</u>

"The Employment Judge has not used the correct bundle for making the Judgment and therefore has not considered all the evidence from the claimant references in his statement and needed for a just decision. The Bundle to be used and agreed was 442 pages long. The Judge has used a bundle with only 181 pages. ‘‘

4. The parties accept the reference to 181-pages is a typographical error and that I had the correct bundle of 442-pages before me.

<u>Submission ground 2</u>

"The respondents are a solicitor's company represented by a major employment corporation who specialise in employment litigation. The claimant is a litigant in person with many serious and underlying health conditions and disabilities. These are worsening and also are exacerbated by the respondents ongoing harassment and intimidation. The parties should be placed on an equal footing as per the overriding objective and in the interests of Justice."

5. The claimant does not dispute that reasonable adjustments were made at

all hearings I have been involved with, including the hearing held on 31 January 2024 with a view to the parties being placed on an equal footing taking into account that whilst the claimant is a litigant in person, he is a solicitor with a practicing certificate with litigation experience.

Submission ground 3

"[the Tribunal] …accepting the claimant resigned on the 25th March 2022. This is not correct and there is a contemporaneous note at page 166 of the bundle. That is the most accurate record of the meeting. It does not make sense for the claimant to resign from a 4 year employment agreement and with his son Shiraz Ali, a Trainee Solicitor as per the agreement, Sana Iqbal Solicitor, still employed at the firm and with all the claimant's life's work in clients, his goodwill, name, ongoing clients and cases all tied in with the Respondents and being owed many thousands of pounds in overdue bonus payments etc." The claimant repeated this submission orally.

6. Para.7 of the reserved judgment and reasons refers to the claimant having resigned on the 25 March 2022. I had not appreciated that the claimant's claim was not one for constructive unfair dismissal/discriminatory dismissal and whether the claimant was expressly dismissed or not was one of the issues to be decided. I agree with the claimant that whether the claimant was dismissed or resigned and claiming constructive unfair dismissal is not a matter that can be decided at a preliminary hearing without all of the evidence being heard. Accordingly, I have deleted the reference in para.7 and 20 to the claimant's resignation and inserted the following: "the effective date of termination is 25 March 2022. There is an issue between the parties as to whether the claimant resigned or was expressly dismissed."

7. With reference to the fundamental issue before me in this reconsideration hearing I take the view that whether the claimant was dismissed or resigned is not relevant other than on time limit and jurisdiction given the claimant can only bring a complaint for breach of contract upon termination of employment.

Submission ground 4

''Both parties entered into lengthy negotiation, and these are documented in the bundle used at the previous hearing but don't seem to be in this bundle. I attach these for reference. The employed terms were agreed between the parties and written down in the business agreement. Even if they were not written down, they would have been binding as they were agreed between the parties. In this case they were written down too as evidence of what was agreed. Duly signed by the parties. The intention was to be bound by the agreed terms." The claimant repeated this submission orally, referring to handwritten notes of the negotiations entered into before the 21 April 2021 which was to come into effect on 14 June 2021 ("the Business Agreement").

8. I accept that there were lengthy negotiations. I concentrated on the

Business Agreement signed by the parties. It is this agreement I took into account. There was no need to consider the negotiations leading up to it in order to ascertain whether the Business Agreement was a contract of employment. At no point during his submission did the claimant deal in any meaningful way with the limitations on the Employment Tribunal who has no jurisdiction over the enforcement of business agreements and their terms. The Tribunal can only enforce a legally binding employment contract between an employer and an employee, and in this respect the claimant submitted that the "Business Agreement" included an employment contract because there was an agreement to employ him. I did not agree for the reasons set out in the reserved judgment and reasons, particularly at para.11.

9. In his Grounds of Complaint, the claimant refers to the negotiations at para.2 "to buy/merge all my interests in AA Solicitors, including the name, goodwill…" and he argued that payment for which was to be made via wages and bonuses. It was fundamental to my conclusion that striking out was appropriate in Mr Ali's case on the basis that "the Business Agreement did not specify whether the claimant was to be employed under a contract of employment or work for the first respondent or on a self-employed consultancy basis as a consultant..." Mr Ali has not asked me to reconsider this conclusion, which I believe is key to the question whether Mr Ali was suing under a contract of employment or a Business Agreement concluding on a plain reading of the Business Agreement it consisted of the latter. Further, from the period 14 April 2021 to SRA approval of the claimant's employment with the respondent, a contract of employment could not have been entered into. I have commented further on this below.

10. Taking the claimant's case of breach of contract and unlawful deduction at its highest, whilst I am satisfied that the claimant's reliance on the Business Agreement defies the test of basic logic, nevertheless, an oral agreement was reached concerning the contractual employment terms and no written terms and conditions of employment were provided to the claimant who started working in the capacity of an employee. This requires evidence to be heard for the reasons set out below.

Submission ground 5

"The claimant refers to his witness statement and says that both parties knew each other well. The respondents were aware of the claimant['s] issues at the SDT, the newspaper article shows that, the email of the 6th of April 2021 on the order of the SDT makes clear what the position was. The respondents had a copy of that order before we signed the Agreement. The respondents had been in touch with the SRA as to how quicky permission could be sought for the claimant, prior to signing of the agreement, this was discussed and both parties had done their due diligence. They signed the agreement including the employment terms because they wanted to be bound by them. The agreement was signed by the claimant and the respondents. The agreement is between Asghar Ali, the claimant as a person, and the respondents." In oral submissions the claimant also referred to the Solicitors

Disciplinary Tribunal order dated 1 April 2021 (in the bundle) which indefinitely prevented the claimant from practicing as a sole practitioner or partner, act as head of legal practice/compliance officer for legal practice or a head or finance etc., hold client money, be a signatory to any client account and "**work as a solicitor other than in employment approved by the Solicitors Regulation Authority**" ("the SRA"). My emphasis.

11. I had taken the claimant's disciplinary history into account and its effect on the respondent's application to the SRA. It is not in dispute and there was no need for me to go into great detail other than to record that the respondent were required to obtain the approval of the SRA before employing the claimant, which is an indication that the claimant could not have been employed under the 21 April 2021 Business Agreement with a start date on the 14 June 2021 as argued by the claimant. The claimant's contract of employment could only commence after the respondent had obtained approval from the SRA. The SRA decision is dated 10 September 2021 and the claimant started work as an employed solicitor for which he received a monthly payment on the 1 October 2024. I have commented further on this employment relationship below.

Submission ground 6

"The respondent has not disclosed all the communications with the SRA, including the email of the 29th June 2021to the SRA, which was responded to by the SRA email of the 1st June 2021. We have asked for that email and other disclosure from the Respondents about 7 times. This is still not forthcoming. The 2nd Respondent says in his statement at paragraph 14 and 15 that he wrote to the SRA on the 5th of May 2021, and they replied on the 11th May 2021. These have not been disclosed.

They initiated the restrictions, as the SDT order did not require the onerous conditions as per the SRA permission. These were asked for and applied for by the Respondents." In oral submissions the claimant accepted documents requested had been provided by the respondent and argued that the respondents had intentionally proposed onerous conditions in order the circumvent and void the 21 April 2021 Business Agreement.

12. The claimant confirmed that communications with the SRA have now been disclosed, namely the respondent's application for approval to employ the claimant on 5 May 2021 which included "I can confirm during his employment he will not breach any of the conditions in the attached order. **We have not confirmed a start date as we wish to have approval before we confirm the same**" [my emphasis]. The SRA responded on 11 May 2021 requiring the respondent sent details and the name of the person "directly responsible for supervising Mr Ali on a day-to-day basis" and the name of the person if the manager with overall responsibility for supervision and management of the claimant was absent.

13. It is notable that the SRA in the same letter requested details of "Mr Ali's **proposed job title**, and a copy of any **proposed contract/main terms and conditions/job description of proposed employment**" (my

emphasis). The use of the word "proposed" is a further indication that the claimant's contract of employment was yet to be agreed and the claimant's argument that it must include the terms agreed in the 21 April 2021 Business Agreement with a start date on the 14 June 2021 that never took place, has no reasonable prospect of succeeding at a final hearing.

14. It is notable that the first respondent's application for SRA approval was dated after the alleged start date of the claimant's employment/self-employed consultancy on the 14 June 2021; a further indication that he was not an employee at the time.

15. It is clear from the undisputed contemporaneous documents that the terms agreed in the Business Agreement had been overtaken by events, particularly the SRA conditions, which the claimant ultimately agreed to when he entered into the employment contract after the SRA had approved his employment on 10 September 2021, just under 5 months after the Business Agreement was signed. It is notable that it took the claimant until 30 August 2022 to issue proceedings, over 16 months after Business Agreement was signed by both parties, just under 13 months after the claimant was to start work either as an employee or in the capacity of a self-employed consultant and some 11 months after he had entered into a contract of employment approved by the SRA.

Submission ground 7

"The respondents have had the benefit of all the claimants work base, client case, live cases transferred, his team, use of the premises from May to October 2021, expertise, hundreds of thousands of fees earned from his clients and it seems once that was done they chose to create a situation where such restrictions were put in place to engineer and end the agreed 4 year deal and terms. No Charge or payment was made for the transfer of the work, the team, the goodwill, The consideration was the 4-year employment for Asghar Ali and the training of Shiraz Ali to become a solicitor and for Sana Iqbal to be employed." This is the nub of the claimant's case, and he is aggrieved "the Respondents have cherry picked what they wanted and then dismissed both Asghar Ali now also Shiraz Ali. They have had their cake and eaten it. They have not honoured the 4-year employment deal."

16. It is undisputed the SRA set out a number of recommendations in an email dated 2 September 2021 to the claimant including the limitations referred to above, which he accepted on the 2 September 2021. Approval for the claimant to be employed by the first respondent was granted on the 10 September 2021 with the restrictions in place, the second respondent having confirmed he accepted the conditions on behalf of the first respondent. During this period there is no suggestion by the claimant in any contemporaneous document that the SRA restrictions had effectively been imposed by the first respondent with the aim of voiding the 21 April 2021 Business Agreement, and there was nothing to stop the claimant from enforcing the terms of sale in the civil courts.

Submission ground 8

"The claimant was employed by the Respondents; this is clear from the SRA authorisation and the respondents admit that he was employed as at page 149 of the bundle."

17. I have considered the SRA decision dated 10 September 2021 in detail and contrary to the claimant's submission, it is clear that the decision deals with an application by the first respondent. The following is relevant in the contemporaneous document referring to the first respondent's application; "**for approval to employ Asghar Ali who is subject to a condition** (amongst others) **that he may only act as a solicitor in employment we have approved, by order of the Solicitors Disciplinary Tribunal**…5.5. **the firm propose to employ Mr Ali** as an assistant solicitor in the firm's conveyancing department…On 2 September 2021 **I emailed both the firm and Mr Ali recommending the firm's application be granted subject to the conditions listed…Mr Ali responded the same day to confirm he accepts the recommended conditions**….I have considered the information provided by the firm about the proposed role and the arrangements of Mr Ali's supervision, and whether that mitigates the risk relating to Mr Ali…I note that the allegations found proven against Mr Ali related to RTA claims which were fraudulent or alternatively suspicious…**The firm have confirmed that Mr Ali will be practicing** as a solicitor in the conveyancing department, he will not be opening files…and all his files will be checked…Therefore, there is little risk of the conduct that resulted in Mr Ali's STD judgment will be repeated…given the seriousness of Mr Ali's adverse regulatory history…a condition is necessary limiting his work to that described by the firm. I also consider that any changes the firm wish to make regarding **Mr Ali's employment should first be approved by us**…" [my emphasis].

18. The claimant's argument concerning the respondent's knowledge of the STD Order has no merit. The claimant submitted that there is a dispute about the date when the first respondent had received the STD order, and the "key point" is that the restrictions on his practicing certificate "were based on what the respondent asked for…and they are using that to show the restrictions frustrated the contract…they had the cases, my goodwill, the use of the office and…the whole team…they had cases worth hundreds of thousands of pounds in fees…the restrictions they asked for was a way of reneging on the agreement they had to employ me for 4 years and the other terms agreed. It was manipulated…It is essentially these kinds of facts which go into a lot more detail as the respondent's motivation, my dismissal and breaching the terms of my employment that can only be decided at a full hearing." I did not agree with the claimant; the contemporaneous documents are clear in their effect, including correspondence received from the SRA, and realistically there can be no core of disputed facts. In short, the claimant was found guilty of serious professional misconduct by the STD who set out conditions and required limitation on his practising certificate to be agreed between a prospective employer, the claimant and the SRA, which was done. The SRA conditions fundamentally affected what work and responsibilities the claimant could

perform, for example, he had to be supervised at all times instead of supervising others. It is not credible that the SRA would agree conditions and limitations with the claimant (who raised no issue at the time) and the first respondent that were not necessary to protect the public. It is not credible that the first respondent would somehow manoeuvre the SRA into setting the conditions and limitations with the sole objective of taking over the claimant's practice without payment.

19. The claimant's insistence that the SRA authorisation is evidence that the respondents "admit" he was employed goes to the heart of his credibility and is misconceived. The language used by the SRA can be interpreted in one way only, giving the words their ordinary commonsense meaning, which is that the respondent proposed to employ the claimant, and his employment could not be confirmed until the SRA laid down conditions that were agreed to by the respondents and claimant. I take the view that there is no reasonable prospect of the claimant persuading a Tribunal at final hearing that he was employed under the 21 April 2021 Business Agreement and that the subsequent conditions suggested by the respondents to the SRA were designed to undermine the 21 April 2021 Sales Agreement giving the respondents the means by which to take advantage of the claimant and avoid employing him under the original terms. The claimant referred to the documents in the bundle as evidence that prior to June 2021 the first respondent had generated income through cases sent to it be the claimant and files transferred as part of his argument that both parties were acting in reliance of the 21 April 2021 Business Agreement. This information did not persuade me that there was a central core of facts in dispute concerning whether the 21 April 2021 Business Agreement was a contract of employment, and the transfer of files points strongly in the direction of a sale agreement which is outside the jurisdiction of the Tribunal.

20. In short, the undisputed documents speak for themselves, and there is no requirement for the Tribunal at a full hearing to look behind them.

21. I do not intend to deal with the claimant's observations about salary payment, mixing the SRA and STD orders in any great detail other than to record that the contemporaneous documents reflect the conditions imposed on the claimant were a requirement for him to practice as a solicitor, and there is no suggestion the claimant was "forced to accept them" or the salary payments he received from the respondent at the time. The SRA decision dated 10 September 2021 made it clear that on "2 September 2021 **I emailed both the firm and Mr Ali recommending the firm's application be granted subject to the conditions listed…Mr Ali responded the same day to confirm he accepts the recommended conditions**..." [my emphasis]. Taking the claimant's case at its highest, he may have unwelcomed the conditions imposed by the STD and SRA and agreed to by the respondents, but adhering to these conditions was the only means by which the claimant could practice as a solicitor and enter into a contract of employment with the first respondent against a background of serious fraud allegations.

Law

22. Under Rule 70 of the Employment Tribunal Rules of Procedure 2013 a judgement can be reconsidered where it is *necessary in the interests of justice* to do. Under Rule 72 if a judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application must be refused.

23. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation and reconsiderations are a limited exception to the general rule that judgements should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry, and it is the Tribunal's view that this is precisely what the claimant is seeking to achieve, whatever the merits of his argument. In arriving at my conclusion, I have taken into account that striking out a claim at preliminary hearing stage is a draconian step used in exceptional circumstances, and if there is any room for doubt, a deposit order is less draconian.

Conclusion

24. In oral submission both parties made reference to the Court of Appeal judgment in Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330.

25. The claimant submitted that both the breach of contract claims and unlawful deduction "should go to a final hearing with all the evidence in the matter." The issues to be resolved can only be resolved justly at a full hearing with evidence given by the parties and "the claimant's case involved a crucial core of disputed facts that could only be resolved through a full hearing and evaluation of evidence as per the case as per the decision in the case of **Ezsias v North Glamorgan NHS Trust** in the Court Of Appeal." The claimant argued that the claims "should be decided a full hearing, with a panel including a Judge and lay persons. It should be decided after evidence is given, by the claimant, by the respondents, by Shiraz Ali, by Sana Iqbal. Only then can there be justice and fairness in the matter… Deciding a major part of the employment case without hearing evidence from all those involved has not done justice to the claimant and is not in the interest of justice…the case of **Ezsias** should support the claimant case. In that case it was said **'the claimant's case involved a crucial core of disputed facts that could only be resolved through a full hearing and evaluation of evidence as per the case'**. That is applicable in this case." In oral submissions the claimant referred to the substantial number of documents in the bundle, including evidence of the legal practice/business transferred by the claimant as an individual to the first respondent, relied on as evidence that employment terms had been agreed upon the terms of the 21 April 2021 Business Agreement being reached and he was an employee under that agreement.

26. The claimant further argued that his claims should not be struck out on the ground of no reasonable prospect of success when the central facts are in

dispute. I dealt with this argument in the reserved judgment and reasons, and the position has not changed with reference to the Business Agreement following Mr Ali's application for a reconsideration and the production of a number of documents. It appears to me that the core facts relating to the breach of contract and unlawful deduction of wages claims are recorded in undisputed contemporaneous documents explored above. There is no real substance to Mr Ali's assertions, a number of which were undermined by the undisputed contemporaneous documents. In Mr Ali's claims (setting aside the disability discrimination complaints which should rightly proceed to a final hearing) there is no 'crucial core of disputed facts' relating to the Business Agreement and the aftermath, despite Mr Ali's best attempts at generating then for the purpose of this reconsideration.

27. The claimant's arguments relied on at this reconsideration hearing reinforced the findings made in the reserved judgment and reasons that when he entered into the Business Agreement in the capacity of a sole practitioner, to sell his legal practice, AA Solicitors, part of the consideration was either a self-employed consultancy agreement or in the alternative, an employment contract entered into with the first respondent. The claimant did not take up any employment with the first respondent until following the SRA's decision on the 10 September 2021 when the respondent employed the claimant on the 1 October 2021 as an assistant solicitor. These events superseded the 21 April 2021 Business Agreement which the claimant chose not to enforce in the civil courts. Between the 21 April 2021 and/or the 14 June 2021 to 1 October 2021 when his employment commenced and he was paid wages, the claimant was not contractually entitled to wages and his claim that the first responded made an unlawful deduction of wages has no reasonable prospects of success.

28. From 1 October 2021 until the claimant's dismissal/resignation on 25 March 2022, just under 6 months the claimant was paid salary under the oral agreement and the term of that agreement is in issue. The claimant agreed the SRA conditions in writing, following which the first and only contract of employment with the first respondent was entered in to but not evidenced in writing. In order to disentangle the contractual position as at the 1 October 2021 when the claimant started working for the respondent in the capacity of an employee (as conceded by both parties) evidence will need to be heard, and whilst I take the view the claimant's case that he had reached an oral agreement for a salary payment in excess of this monthly pay may be weak taking into account the number of months the claimant worked, giving the claimant the benefit of the doubt, it is in the interests of justice for the breach of contract/unlawful deduction of wages issue for the period 1 October 2021 to 25 March 2022 to proceed to a final hearing.

29. The claimant is aggrieved that the respondent has had the benefit of the claimant's business and he had been subjected to severe limitations on his ability to practice that affected him financially. Given the position adopted by the regulators, the claimant's argument that a full panel should hear evidence on how the respondents "reneged" on the Sales Agreement "shows poor intentions" is unpersuasive, and there is no getting away from

the fact that the factual matrix in this case, supported by undisputed contemporaneous documentation, results in the claimant's case being very weak and likely to fail, in other words, with the exception of the employment period 1 October 2021 to 25 March 2022, they fall into the category of "*scandalous or vexatious or has no reasonable prospect of success;* and *(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant … has been scandalous, unreasonable or vexatious*…" for the reasons already stated in the reserved judgment and reasons.

30. I prefer submissions made on behalf of the respondent by Mr MacFarlane to the effect that (paraphrasing) even if the claimant's arguments were taken at their highest, his arguments are fanciful in relation to the Business Agreement. I do not accept Mr MacFarlane's argument that the claimant has still not established any claim that has a prospect of success in respect of his period of actual employment. Mr McFarlane submitted Ezsias (above) does not assist the claimant as this was a case that involved diametrically opposing evidence and there was a crucial core of disputed facts, in contrast to the claimant's case where it is permissible to hear the matter by taking his case at its highest without hearing oral evidence. For the claimant's employment contract to be lawful it had to comply with the SDT and SRA conditions failing which the claimant "crucially" could not work and the Business Agreement was superseded and frustrated because it was incompatible with the practicing conditions placed on the claimant, and had any contract of employment been entered into at the time of the business agreement it would have been void for illegality. It appears to me that once the claimant had agreed terms with the first respondent and SRA the contract of employment was in place, and it was lawful.

31. Accordingly, the Reserved Judgment and Reasons promulgated on 13 March 2024 is varied as follows:

31.1 Para 17: "By 11 May 2021 it was agreed between the claimant and the respondents that he could not work as previously agreed and an oral agreement was entered into whereby the claimant would be employed as an assistant solicitor in the conveyancing department with limited involvement in the work, "no involvement" in client care letters, new quotes and case opening, no exchange or completions until after a file review and no involvement with post-completion or supervisory duties. The claimant was required to be supervised. I find by the 11 May 2021 the parties had proposed a new agreement on the basis that the original contract terms set out in the Business Agreement were no longer relevant or effective. As a matter of logic, even if I had found that enforcement of the Business Agreement was within the Tribunal's jurisdiction, which I did not as it was clearly a commercial agreement with payment for a business, part of which the claimant has included in his damages claim of £300,000, I would have gone on to find the proposed agreement was the 11 May 2021 oral agreement whereupon the respondent would offer an employment

contract to the claimant when the employment restrictions were agreed by the SRA and approval granted for the claimant to be employed by the first respondent."

31.2 Para 19: "Following the SRA's decision on the 10 September 2021 the respondent employed the claimant on the 1 October 2021 as an assistant solicitor. Prior to his date the claimant was not employed by the respondent but conducted in-house training on a self-employed basis."

32. The judgment is varied in respect of the oral agreement entered in to between the parties at paragraph 17 and 19 of the Judgment and Reasons promulgated on 13 March 2024 to the effect that the terms of the employment contract under which the claimant was employed from the 1 October 2021 to 25 March 2025 and whether those terms have been breached and/or the claimant suffered an unlawful deduction of ages, will be decided at a final hearing.

33. Mr Ali who submitted he has "even chances of success" has invited me to make a deposit order under rule 39(1) which provides that where "*the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success" such an order can be made.* The benefit to Mr Ali is clear, however, I cannot conclude that the his claims of unlawful deduction of wages and breach of contract in relation to the Business Agreement, has little reasonable prospects of success and accordingly the breach of contract claim and unlawful deduction claim relating to the Business Agreement and period 21 April 2021 to 30 September 2021 2021 should remain dismissed.

34. With reference to the breach of contract and unlawful deduction of wages claim relating to the employment period 1 October 202I to 25 March 2022, both will proceed to a final hearing and given the narrow issues I take the view that the 6-day final hearing allocation is sufficient and there is no need to extend the hearing time and/or adjourn it with a view to an extension. I am also satisfied that making a deposit order is in the interests of justice, particularly the respondent who will incur legal costs in defending two claims that in my view little reasonable prospect of success.

35. The Tribunal's discretion must be exercised judicially, with regard not just to the interests of the party seeking the reconsideration, but also to the other party, the requirement for finality to the litigation and giving effect to the overriding objective to deal with cases 'fairly and justly' — rule 2. This includes: ensuring that the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, so far as compatible with proper consideration of the issues; saving expense, and it should be guided by the common law principles of natural justice and fairness. As set out in the judgment of the Court of Appeal in Ministry of Justice v Burton [2016] EWCA Civ 714, referred by Mr McFarlane, when dealing with the discretion required, "that discretion had to be exercised in a principled

way." I have taken all of these matters into account.

Deposit Order means.

36. As discussed with the parties there is an issue taking the claimant's means into account as it appears he may not have made full disclosure in respect of work carried out. In anticipation of a possible deposit order with a view to means being assessed in order to ensure that any deposit order is not a barrier to justice, the claimant has provided evidence of means that is incomplete and fails to make any reference to conveyancing work carried out by Mr Ali for a firm of solicitor described as a "friend." Mr Ali is yet to be cross-examined on his statement of means and there is an issue as to whether it can be relied on or not. The parties have been involved in two preliminary hearings and one reconsideration all of which have cost consequences for the respondent.

37. Taking into account a party's means when deciding the amount of the deposit order is a requirement with a view of ensuring that the deposit order is not a barrier to justice. In accordance with the overriding objective and taking into account the unsatisfactory evidence before me, I propose with the agreement of the parties to make a deposit order of £500 in total as a condition of Mr Ali continuing with his limited claims of breach of contract and unlawful deduction of wages. The parties will liaise and write to the Tribunal no later than 14-days after receiving this reserved judgment and reasons confirming whether or not the £500 deposit is agreed, and if not, agree a case management order with specific reference to that documents relating to means the respondent believes is missing and why, that will include the parties exchanging witness evidence concerning the work the claimant has carried out and not disclosed, and the claimant will be ordered to up-date his statement of means.

38. In conclusion, the claimant's application for a reconsideration hearing to set aside the judgment and reasons promulgated on 13 March 2024 is dismissed in part and the original judgment confirmed in relation to the 21 April 2021 Business Agreement and its effect.

39. The judgment is varied in respect of the oral agreement entered in to between the parties at paragraph 17 and 19 of the Judgment and Reasons promulgated on 13 March 2024 to the effect that the terms of the employment contract under which the claimant was employed from the 1 October 2021 to 25 March 2025 and whether those terms have been breached and/or the claimant suffered an unlawful deduction of ages, will be decided at a final hearing.

40. The Reasons sent to the parties on 13 March 2023 are varied at paragraphs 1, 7, 17, 19 and 21 as set out in the amended Reserved Judgment and Reasons redated 8 November 2024.

41.

Employment Judge Shotter
8 November 2024

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JUDGMENT AND REASONS SENT TO THE PARTIES ON

22 November 2024

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FOR THE TRIBUNAL OFFICE