EMPLOYMENT TRIBUNALS

Claimant: Ms R Persad

Respondent: Nature Alpha Group Limited

RECORD OF A HEARING

Heard at: London Central
On: 10 and 11 April 2025 and 2 May 2025 (in chambers)

Before: Employment Judge Joffe

Appearances
For the claimant: Represented herself
For the respondent: Ms S Garner, counsel

JUDGMENT

1. The claimant was an employee of the respondent within the meaning of the Equality Act 2010 at material times.

2. The claimant was not an employee of the respondent within the meaning of the Employment Rights Act 1996 at material times.

3. Mr Srivastava, Mr Kato and Mr Azzari were not employees of the respondent within the meaning of the Equality Act 2010 at material times and therefore are not the claimant's comparators within the meaning of section 79 Equality Act 2010.

4. The respondent's response is not struck out,

REASONS

Claims and issues

1. This was a public preliminary hearing listed to consider the following issues:
    a. Was the claimant an employee of the respondent for the purposes of section 83(2) of the Equality Act 2010 ("EQA") (for the purposes of her equal pay and direct sex discrimination complaints)?
    b. Was the claimant an employee of the respondent for the purposes of section 230(1) of the Employment Rights Act 1996 ("ERA") (for the purposes of her breach of contract complaint)?
    c. Are any of the four comparators named by the claimant for the purposes of her equal pay complaints "comparators" as defined by section 79 EQA? (The four named comparators are Nitesh Srivastava; Kaz Kato; Devonte Emokpae; and George Azzari).

2. The claimant did not pursue an argument that Mr Emokpae was a comparator in evidence or submissions and I do not consider his position further.

3. The claimant also made an application to strike out the response which I heard in tandem with the other issues.

Findings

<u>The hearing</u>

4. I had a main bundle of some 867 pages. I had witness statements and heard evidence from:
    a. The claimant;
    b. Dr Vian Sharif, founder of the respondent.

5. I also had a small bundle of additional documents which the claimant wished to rely on but which the respondent had not included in the joint hearing bundle.

6. The respondent was at the material time and may still be a startup company. Dr Sharif's background is in financial services with a specialty in nature and sustainability and she been involved in research and advisory work for UK government bodies.

7. Dr Sharif described the respondent as ‘an AI-first fintech platform delivering science-based environmental risk insights, informing financial decisions.’ This was an idea she conceived in 2020 and she started to work on it with a colleague, Mr T Wittig, in early 2021. By mid 2021, three or four people were working on the business alongside other jobs those individuals had and the respondent ’had a prototype that could do setup screens, and an initial dataset for 100 companies’.

8. Mr Witig left the business in 2021 and Dr Sharif decided that she needed a data scientist adviser who could do what she described as a specific task ‘to look at the data and formalise it and codify it so that we could then productionise it.’

9. The claimant and Dr Sharif made contact with one another on 10 December 2021. The claimant has an impressive CV as a data scientist / scientist in the field of artificial intelligence and climate science and she is the founder and chair of her own company, StatWeather. The two went on to have a remote meeting at which the project was discussed. The claimant said in oral evidence that she saw the meeting as ‘basically a job interview’.

10. There were a number of documents discussed and agreed at this time. On 11 December 2021, the claimant signed a non-disclosure agreement essentially to prevent her from disclosing confidential information discussed with her as part of the initial discussions between the parties.

11. On 14 December 2021, the claimant signed an Assignment of Intellectual Property Rights assigning the rights to any material / intellectual property she created for the respondent to the respondent. The same day she signed a Consultancy Agreement for a period of eight weeks from 15 December 2021.

12. This agreement included the following terms:

    [At clause 3]

    With prior written approval by a director of the Company, the Consultant may appoint a suitably qualified substitute to perform the Services on the Consultant's behalf("Substitute"), in which case, before performing any part of the Services, the Substitute must enter into direct undertakings with the Company, including with regard to confidentiality and intellectual property rights. All the duties and obligations on the Consultant will apply to the Substitute, and the Consultant will continue to be subject to all duties and obligations under this Agreement for the duration of the appointment of the Substitute. The Company will continue to pay the Consultant as set out in

section 4 below and the Consultant will be responsible for all payments to the Substitute.

…

5 OTHER ACTIVITIES

Nothing in this Agreement will prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the period of the Services provided that:

(a) such activity does not cause a breach of any of the Consultant's obligations under this Agreement;

(b) The Consultant will not engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of the Company in connection with services connected to a project similar to the Project without the prior written consent of a director of the Company.

…

14 STATUS

The Consultant will be an independent contractor and nothing in this Agreement will render the Consultant an employee, worker, agent or partner of the Company and the Consultant will not hold themselves out as such.

The Consultant confirms that they will be personally fully responsible for

(a) any taxation whatsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law; and

(b) any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Company arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Company.

13. There was an entire agreement clause.

14. Schedule One of the agreement set out the services the claimant was to provide and a weekly fee for those services. The services were described:

The Consultant will provide the following services to the Company in connection with the Project:

The intention of this 8-week project is to provide an expert review and subsequent evolution of the NA model and methodology

Deliverables:

- Review methodology, model and code as it exists today. Output: A first version of methodology document with comments, insights and suggestions (based on existing materials)

- Challenge the methodology and refine it to improve precision based on discussions with NatureAlpha team and articulate new methodology and model

- Integrate climate scenario element as agreed with NA

- Manage/write code for the improved model including direction of data scientists we have available (Yuchao & Atakan - Geospatial specialist)

Final output: Full written documentation of methodology, including changes and improvements, implementation into existing code of model.

15. There were arrangements for the claimant to invoice the respondent. There were no provisions for pension or for deduction of tax and National Insurance. There were no provisions for taking holiday or for holiday pay.

16. There were no fixed hours in which the claimant was to provide the services, although the claimant in her oral evidence thought that there had been some discussion by email about hours. There were however no relevant emails before me.

17. The claimant had made some notes of the initial discussions. She said that she and Dr Sharif discussed the short term need which was for the services in the Consultancy Agreement but also the respondent's long term need for a chief technology officer and the potential for the claimant to fill that role in the future.

18. As to the substitution clause, the claimant said that it did not reflect the reality of how the parties acted. She accepted she did not challenge the clause.

19. Dr Sharif said that at that time the respondent had no employees and she had no intention of appointing any in the immediate future. She herself had a full-time job elsewhere and was working on the respondent's work in her evenings and weekends. She had two other contractors in place at the time: a data scientist / data engineer and a developer.

20. Dr Sharif said that she had catch-up meetings with the claimant and messaged via WhatsApp for the claimant to report back on her work. The claimant was living in Amsterdam and they met in person only once. So far as Dr Sharif was concerned, the claimant was free to do the work at times convenient to her and the relationship was non-exclusive. The claimant used her own IT equipment and worked from her own premises. She had a Nature Alpha email address. Dr Sharif said the claimant also used her private email

addresses. The respondent paid for some software and subscriptions required by the claimant to do her work.

21. The claimant said that she was directed in her work by Dr Sharif and that she had a training and supervisory role in respect of the other scientists. She said that she received direction and reported her progress daily to Dr Sharif via WhatsApp, Slack messages, emails, through project software and at twice weekly stand-up meetings. She said that she met with Dr Sharif over 200 times in 23 months. She provided printouts evidencing the meetings and some 300 pages of WhatsApp messages. She said there was an average of six messages per day and the content was primarily direction and guidance from Dr Sharif and Dr Sharif checking on the claimant's progress.

22. The claimant said that she used the respondent's software for scheduling and project management and had permission to use the respondent's shared drives. She was included in vendor meetings to vet possible vendors and was introduced in client meetings first as the CTO and later as the chief scientific officer (after Mr Srivastava and Mr Kato took on the CTO role in February 2022).

23. There were discussions about the claimant's further involvement with the respondent. On 3 January 2022, the claimant wrote an email to Dr Sharif with the subject line: 'Working Together after the Sprint'. She proposed that she be paid a small salary (eg £2000 per month) and some equity (say 15 – 20%). She suggested that she could do 15 hours per week as a 'Co-founding CTO' and also advise on things like strategy. She could take the small salary and equity and commit to a year. Her hourly rate could increase as the respondent gained customers. She concluded the email: 'I am totally open to other proposals, but this is just an idea.'

24. Dr Sharif replied the same day:

Thank you so much for giving this some thought and being open to it. Your thoughts look very appropriate to me, and aligned with what I had imagined and can manage right now for where we are in our stage of growth.

Let me have a chat to Leonard and Simon and circle back to you ASAP.

Thank you, and I really appreciate your consideration on this. What an exciting way to start the year!

25. The respondent said that at this point there were no customers and the claimant accepted that there was no revenue. That was why the proposals for the claimant's further involvement focussed more on equity than salary.

26. The claimant said that there were further discussions with Mr Seelig, an advisor and Mr Zadek, a board member, who approved of the 15% proposal.

Further contracts

27. An issue arose as to what further contracts / draft contracts were extant for the claimant during this period (ie after the initial eight week agreement). The respondent had included in the bundle a draft which was dated 10 February 2022 for services to be provided from that date. The services to be provided were described as follows:

2.1 You shall use your best endeavours to promote our interests and any other company in our group and, unless prevented by ill health or emergency, devote approximately 15-20 hours each week to carrying out the following services for us:

(a) Deliver Scientific Advisory services for the Company and associated deliverables as described in Appendix 1

(b) liaise with and report to the CEO of the Company regularly and the board of directors of the Company as required.

28. The draft agreement contains provision for a monthly fee of £2000. There is a clause entitled 'Consideration Shares and Vesting Provisions ' which is incomplete as it does not specify the number of shares to be transferred to the claimant.

29. There were similar provisions to those in the earlier contract allowing the claimant to perform other work and saying that her status was that of an independent contractor.

30. It became apparent during the hearing, and the respondent accepted, that this was not a draft agreement circulated to the claimant at the time. Ultimately the respondent's position on this document was that it in fact was created in around August 2022 and was not sent to the claimant. The claimant included in her additional bundle an email chain dated 9 February 2022 – 12 February 2022 between her and Dr Sharif. Dr Sharif sent the claimant a version of an agreement. The claimant made some suggested changes. Dr Sharif agreed those changes. The claimant sent a further version of the agreement and Dr Sharif wrote on 12 February 2022:

This is perfect. We are finalising the cap table to be able to write in the exact number of shares which constitutes 15% (I will ask my lawyer if he can put in some wording on this)

31. The final version of the agreement attached to this chain required the claimant to '(a) act as Chief Technical Officer for the company and associated deliverables and (b) liaise with and report to the CEO of the Company and the board of directors as required'

32. The claimant was to be paid £2000 per month and she was to invoice the respondent for those services. There was a clause about the shares which did not contain a number of shares to be allocated to the claimant. The claimant could engage in other work which did not create a conflict of interest save that she would have to get written consent from the CEO to work for a competing business. There was no substitution clause. The status clause still identified the claimant as an independent contractor and not an employee.

33. The parties did not sign this document. The claimant considered the emails between herself and Dr Sharif constituted a binding contract for her to become chief technical officer. It appeared from the email traffic that only the number of shares remained to be agreed.

34. The respondent did not dispute that the version of the contract provided by the claimant was the version discussed by the claimant and Dr Sharif in February 2022.

35. The claimant said that she saw herself as having a role / job at this point, There was no appendix describing services to be provided as she was doing a role. A chief technical officer was a C-suite level role in the business and was an internal role as compared with an adviser, who was an external person. The services appended to the draft agreement which the respondent accepted was not sent to her were ones which she had never seen and did not reflect discussions she had had.

36. Dr Sharif explained in her evidence that because the respondent was a startup, it had no inhouse legal, HR or finance resources. There had been a number of versions of the consultancy agreements at various points, some of which were only circulated between her and an external legal adviser. The respondent had disclosed what had been saved to its systems. She was a one or two man band with outsourced legal advice. She made documents and saved some but not others; she had failed to change dates on drafts.

37. I saw invoices the claimant sent to the respondent over the period.

38. It was put to the claimant that the work continued to be much the same as the work carried out in the initial eight week period. The claimant said that the work she initially carried out was itself chief technical officer work and she continued to perform chief technical officer work. Some invoices referred to the claimant as ’scientific officer’. The claimant said that reflected how Dr Sharif asked her to present herself. She said that Dr Sharif transitioned her from CTO to chief scientific officer.

39. This occurred around 22 February 2022 when Mr Srivastava and Mr Kato were onboarded and took on the chief technology officer role. There was some inconclusive debate in the hearing as to the ambit of the roles ‘chief technical officer’ and ‘chief technology officer’. The respondent suggested that

the latter was a wider role than the former. Ultimately the distinction did not seem to be material to the issues I had to decide. My understanding of Dr Sharif's evidence was that it was useful in startups to be able to hold out people out as being in C-suite roles for the purpose of discussions with potential clients and investors.

40. There was a further unsigned agreement in the bundle dated 1 October 2022 which described the services as:

(a) Deliver Scientific Advisory services for the Company and associated deliverables as described in Appendix 1
(b) liaise with and report to the CEO of the Company regularly and the board of directors of the Company as required;
It did not appear that this was sent to the claimant.

41. In 16 November 2022, the claimant signed a consultancy agreement for services to be provided between 14 November 2022 and 9 January 2023. There was a substitution clause, provision for the claimant to undertake other work as before and a provision about status as before. Schedule One set out an eight-week project the claimant was to undertake:

The intention of this 8-week project is to develop a calculation methodology for a biodiversity footprint metric using LCA methods with an output that takes into account MSA and PDF.

The fee provided for was*: Additional £4,000 per month in addition to current arrangement of £2000 per month*

42. It was the claimant's case that this arrangement was additional to and not in substitution for previous agreements.

43. In October 2023 there were discussions between Dr Sharif and the claimant which Dr Sharif characterised as discussions about the claimant becoming an employee of the respondent. These culminated in an agreement described as an Employment Agreement for a Fixed Period of Time. This was a contract for the claimant to be employed as chief scientific officer for two years at a salary of £10,000 per month. There were provisions typical of employment contracts such as provisions about working hours, probation period, annual leave and sick pay.

44. On 11 October 2023, Dr Sharif wrote to the claimant: *It's a pleasure to have the opportunity to work with you and to bring you on board as a permanent member of the team. Please find attached the employment contract we discussed for your review.*

45. In her 13 October 2023 email in response, the claimant set out her other professional activities. She also set out some other provisions relating to matters such as pension, equipment and holiday for inclusion in the

agreement. Dr Sharif said she would add these provisions to the draft and send to the claimant for her to sign.

46. The claimant's evidence was that she had no other job during the period she worked for the respondent. She was cross examined about various activities referred to in her LinkedIn profile and personal website. The claimant said that she did not do any remunerated work over this period or set up any remunerative business.

47. The claimant said that by the time her engagement with the respondent ended she was working 70 hours per week. She said that the WhatsApp messages showed that she often worked at night and that she was on call for Dr Sharif 24/7. She said that she was fully committed to the respondent as founding CTO. She was also motivated by a desire for equity. She felt that Dr Sharif had power to tell her when to work and that she exercised that power. Dr Sharif said that they discussed work but there was 'no sign off per se' of the claimant's work. There were deadlines for deliverables.

48. It was put to the claimant that she did not have to notify the respondent if she wished to take holiday. She said that she did not take any holidays.

49, The claimant said and Dr Sharif agreed that she had been introduced in customer meetings as CTO or chief scientific officer.

50. As to substitution, the claimant said that she was not free to send a replacement employee. She relied on an incident on 29 September 2022 when she was struggling to complete her work because some of her family, friends and former employees were stuck in a hurricane in Florida. She said that Dr Sharif offered to approach the two mathematician cousins of the claimant to help the claimant fulfil her work. She said that because Dr Sharif was 'the boss', she was the one to approach people to substitute for the claimant. Dr Sharif said that she did not 'approve' the substitutes; it was a peer to peer conversation between her and the claimant. She could not recall whether the work to be covered was work the claimant would have otherwise been doing. The claimant also said that Dr Sharif retained a friend of the claimant's, Ms F Boyd, to assist the claimant with some work. Dr Sharif could not remember any details about that arrangement. Dr Sharif accepted that the claimant had never herself provided a substitute to do her work.

51. The relevant WhatsApp messages from 29 September 2022 read:

9/29/22, 1:59 PM - Vian Sharif @NatureAlpha: I know this is an incredibly hard time- I do need some help with a data request for Monday. Would you suggest I go to Diana or Mary to help us?

9/29/22, 2:00 PM - Vian Sharif @NatureAlpha: Please let me know and I will do as you direct.

9/29/22, 2:07 PM - Ria Persad: Hello Vian, I am glad to say that all of my family and StatWeather employees are safe and have reached safe ground, albeit I'm monitoring the situation very closely. I am going to resume my work routines later on this evening, so please do allow me to help you with the work, and we will be fine for Monday.

9/29/22, 2:23 PM - Vian Sharif @NatureAlpha: Hello Ria, I am so relieved to hear that.

52. The claimant said that she became ill due to stress as a result of the number of hours she was working and the deadlines. She said that Dr Sharif pressured her to provide large amounts of work in short timescales, saying that the respondent stood to lose customers if the work was not produced. This often meant she worked over weekends.

53. The claimant resigned on 20 November 2023. She said that her previous month's pay was a week late at this point and she did not receive a response from finance, She was also aggrieved at having discovered that Mr Srivastava and Mr Azzari were being paid more than she was and because she felt cheated about arrangements made for equity.

I would like to tender my resignation with NatureAlpha starting today. My reason is as follows:

This month, I was not paid, despite my attempts to request being paid. First of all, I do not wish to continue to work with NatureAlpha on a volunteer basis. I want to be paid.

This follows multiple months this year where I had to chase down getting paid well after the due date. This coming January (2024), we are to commence an employment contract, and NatureAlpha would be my primary income. I am afraid that, because of the poor record of NatureAlpha to pay me as agreed, I believe that there could be possible disruptions and defaults on payments of my paychecks.

Because this would be my primary income, I honestly need to be paid according to agreement. I simply do not trust at all that this would be the case.

What has happened also violates my principles and values. I ran my company StatWeather for 15 years. In all of those years, I never once was late on payroll / paychecks. Not even by one minute. There were times in the beginning when money was tight, and I literally ate Ramen Noodles for dinner to make sure that payroll was met to the minute. Why? Because families were depending upon me, and these families had bills to pay. They had food to put on the table and rent to pay. The people who worked for me deserved the respect of being paid on time and according to agreement. To not do so

would be disrespectful, negligent, and unethical. I didn't care what I had to do---every employee/worker was paid on time, and NOBODY EVER had to chase down, grovel and beg for their own paycheck (which is degrading and expresses true disregard) for the work that they had already done for my company.

I have not been treated according to my principles and values by NatureAlpha. I have been paid late, I have had to chase down and nearly grovel for my own paychecks, I have never been given any notice or preparation when my paychecks would be late, nor how late the paychecks would be, and now my paycheck was completely skipped--adding insult to injury, with no response toward my inquiries as to payment. This has not been an isolated event: this has left me feeling very distrustful about any prospects about getting paid if I am to enter into a further contract with NatureAlpha.

To me, skipping my pay check without informing me that I would not be paid this month is the height of disgracefulness. There simply is no excuse. I say, enough is enough.

My resignation is effective immediately. I also wish to not engage in any further discussion.

55. After her resignation, the claimant said that she consulted with an employment lawyer and received advice that she was at least a worker if not an employee of the respondent.

55. The claimant said that discussion around the proposal that she be given an employment contract with Dr Sharif and Mr Hough-Robbins (who became the CEO of the respondent) indicated that a decision as to employee status was based on anticipated funding. The respondent would wish to look light on employees when seeking funding, as that would appear to reduce overheads. She said that there would be no other material change to her work or the way that she performed it.

Alleged comparators

Mr Srivastava and Mr Kato

56. Dr Sharif said that in early 2022 it became apparent that in order to produce a marketable service, the respondent needed people with different expertise from that of the claimant. She said that she was introduced to Daedalus Technology Services Limited ('Daedalus') by a consultant she knew. She planned for Daedalus to provide services she required on a consultancy basis, which services she described as assisting in building the core platform and infrastructure for the product. The main people in Daedalus were Mr N Srivastava, CEO, and Mr K Kato, CTO. Mr D Emokpae also worked for

Daedalus and provided services to the respondent. Dr Sharif said that Daedalus had a 'roster' of people who could provide various services. Dr Sharif said that the relationship was intended to be a temporary one and that the Daedalus people had no interest in becoming employees or gaining equity.

57. I saw various contracts between the respondent and Daedalus.

58. There was a Services Agreement dated 28 February 2022 which looked a lot like the consultancy agreements provided to the claimant, although it was made with Daedalus as an organisation rather than with individuals. This provided, inter alia:

PERIOD OF SERVICES

The Consultant will provide the Services to the Company from 28 February 2022 for a period of 6 months or until seed fund round completes within this period, whichever is soonest unless agreed otherwise or terminated earlier by either the Consultant or the Company giving the other not less than 7 days notice or otherwise terminated in accordance with the terms of this Agreement.

59. In Schedule One, the project was described as: *Provide COO and CTO support to Nature Alpha's Founder Vian Sharif*

60. There was then a detailed description of services to be provided for a fee of £20,000 plus VAT per calendar month. There was no provision as to the hours to be worked in provision of the services or for named persons to carry out the work.

61. I also saw a Master Services Agreement dated 1 August 2022. This agreement was drafted by Daedalus and not the respondent. This agreement provided for the issue of Significant Statements of Work and services to be provided in accordance with those statements. This provided:

STATUS

This Agreement constitutes a contract for the provision of services only. Nothing in this Agreement is intended to or shall (directly or indirectly, for any purpose whatsoever) create any partnership or joint venture between the parties, or any employment, worker, agency or partnership relationship between the Client and the Service Provider (or the personnel of or appointed by the Service Provider) and neither the Service Provider nor any personnel appointed by it shall hold themselves out as being in any such relationship.

The Service Provider confirms that they will be fully responsible for any taxation whatsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. Further, the

Service Provider shall ensure that it discharges and performs any and all obligations and liabilities which may be imposed on it by law or otherwise in respect any personnel working for or appointed by it (including any obligations and liabilities in respect of income tax and national insurance contributions by reason such personnel being employed by or a director of the Service Provider at any time).

The Client has provided to the Service Provider the Status Determination Statement (in the form of the HMRC CEST tool result) in Schedule [x] to this Agreement. The Service Provider warrants that the information provided to, and relied upon by, the Client produce the Status Determination Statement is complete and accurate.

The Service Provider shall (and shall procure that its personnel shall):

(a) perform the Services in accordance with the information provided to produce the Status Determination Statement and with the terms of this Agreement for the time being; and

(b) promptly provide to the Client all such assistance, information and documentation as it may reasonably require from time to time in order for it to determine whether the engagement is or will be within the Off-Payroll Working Rules and is or will be Deemed Employment and, if the Client determines the Engagement is Deemed Employment, to comply with any obligation on the Client to deduct and account for tax or national insurance contributions from the Fee (or any other sums); and

(c) promptly inform the Client of any material change to working practices, or to any information or documentation previously provided in compliance with this Clause, or if for any other reason the Service Provider considers the Status Determination Statement result is no longer accurate; and

(d) promptly volunteer to the Client any other assistance, information or documentation that it considers (or ought reasonably consider) to be materially relevant to determining whether the engagement is Deemed Employment; and

(e) fully and promptly co-operate with any demand, enquiry, investigation or other communication, from the Client or any competent authority or regulator, as regards the tax arrangements arising from this Agreement (including on request promptly providing to the Client copies of any statements, returns, reports or other documents made in respect of such tax arrangements).

62. Daedalus was required to provide suitably qualified and skilled personnel to perform the services but not to provide any particular named individuals.

63. Attached to the agreement was a Master Statement of Work.

64. A Significant Statement of Work for the period 1 August 2022 to 31 March 2023 was also included in the bundle. The fee structure for the work was set out. The 'deliverables' consisted of several projects.

65. Dr Sharif said that the respondent did not dictate to Daedalus who provided the services and how the deliverables were achieved, apart from as to time-frames. There were catch-up meetings. None of the three individuals who provided these services had any personal contract with the respondent or obligation to the respondent. Dr Sharif said that it was a business to business arrangement.

66. In spring 2023, the respondent transitioned away from using Daedalus' services and they ceased to provide services in the second quarter of 2023.

67. The claimant's account of the relationship with Mr Srivastava and Mr Kato was that there were a number of tasks on which she collaborated with them, including overseeing the work of other data scientists and others, attending client meetings, vetting vendors and assisting Dr Sharif with strategy. She provided them with some training. They were responsible for productionising the process.

68. The claimant said that prior to the Daedalus team being involved, she supervised the work of several other analysts and programmers and some temporary outsourced developers.

69. The claimant pointed out that no contract was signed with Daedalus until after the company was incorporated although Mr Srivastava and Mr Kato had started doing work for the respondent on 28 February 2022. The agreement was then backdated until that date. That position was accepted by the respondent. She suggested that the two were working as individuals when they joined. She pointed to notes of the meeting where the two were introduced internally and said that they were introduced as two individuals. Their backgrounds and the roles they were to be performing were described by Dr Sharif. She pointed to an email dated 4 March 2023 from Dr Sharif to a Mr Sadeghi where Mr Srivastava and Mr Kato were described as 'two new additions to the team' and an email of 23 March 2022 in which Dr Sharif said 'I'm copying the team, our CTO Ria, Tesh our COO and Kaz, data scientist/engineer.' Dr Sharif said in cross examination that she referred to people who worked with the team as team members; that included contractors. She said that she did put them in front of clients in those job titles.

70. It appeared that Daedalus was not registered as a company until 7 April 2022. The respondent's case was that prior to the company being registered the individuals were trading as Daedalus Technology Services. The claimant

pointed out there did not appear to be any invoices until 28 April 2022. The respondent's position was that Daedalus did not invoice earlier than that.

71. Dr Sharif said that when Mr Srivastava and Mr Kato were introduced to her they had a different business but were looking to set up a consultancy to provide outsourced tech services. The company had not yet been set up but Dr Sharif was keen to get them on board as quickly as possible. They were clear everything was to be done under the Daedalus banner which is why the agreement ultimately signed in June covered the whole period, She paid them herself from her own resources for the period prior to the initial invoice.

72. The claimant had included in her additional bundle some notes of discussions between herself and Mr Srivastava and Mr Kato. On one occasion on 5 April 2022 Mr Srivastava told the claimant that Dr Sharif had spoken to Mr Srivastava and Mr Kato about possible equity in the respondent. On 30 November 2022, the claimant and Mr Srivastava had a conversation in which Mr Srivastava referred to having had a discussion with Dr Sharif (on a date which was not specified) about whether he and Mr Kato were service providers or part of a co-founding team. He said that 'as we progressed, it was clear that she wants service providers'.

73. The claimant also included a marketing email from Daedalus dated 5 December 2023 with some pricing packages which included 'The Fractional CXO enables one of Devonte, Kaz or I to function as your embedded CTO/CDO/CPO/COO for £1,500 + VAT pcm or £250+ VAT per hour.'

George Azzari

74. Dr Sharif said that the respondent initially had a basic user interface. This was not sophisticated enough for investors and Dr Sharif considered that she needed a data scientist, possibly in a CTO role, to build a platform to use the data they had. She was introduced to Mr Azzari, who was working as a consultant. She agreed with Mr Azzari that he would work for the respondent as a consultant alongside his existing consultancy work. The plan was that Mr Azzari eventually join the respondent as an employee in the CTO role.

75. I saw correspondence between Dr Sharif and Mr Azzari from early February 2023 which led to what was described as a consultancy agreement.

76. In 5 February 2023 Mr Azzari wrote:

Here are a few thoughts on how we could structure an agreement moving forward.

• I'd like to implement a transition phase that leads to a full-time tenure with Nature Alpha; before leaving Woolpert, I want to position them for success with the current projects I'm running. I'd be happy to discuss an ideal timeline for full involvement.

• A simple consulting agreement for this initial phase is certainly enough: I am eager to start working together soon!

o My consulting fee ranges between $150 and $250 per hour, depending on the customer and the effort level; in this case, I'd propose $200/hour for 6-8 hours per week.

o I'm also open to setting a monthly retainer-like fee that accounts for a target level of effort - with the understanding that some months may be slower than others, but things will balance out. If that sounds enticing to you, I'd suggest $5500 monthly for a target engagement of around 30 hours per month for the duration of this phase.

Still, it would be great to have a broader scope agreement reason, for which there are a few aspects to cover: the role/title, salary, incentives, and equity.

o Role: I think I will be most useful (and happy!) at the intersection of technology, science, and product; I enjoy leading and operating within those areas, connecting the dots between them and the overall business strategy.

Depending on needs (and granted that needs often change at this stage), I'd be happy to take on responsibilities like leading (or co-leading) the engineering team, the analytics R&D, and UI/UX development, as well as supporting product discovery, strategy, etc. Title-wise, I think this would translate well in being positioned as the CTO - and it would be an honor. Does this align with your expectations?

o Base Salary: this will depend on other factors, such as equity, incentives, level of involvement, benefits, room for other consulting, etc. The monthly fee I shared above is a good starting reference that can be scaled to what I'd expect for full involvement. Does this sound reasonable?

o Incentives: to answer your question, a hybrid form would be nice, e.g., 30% equity and 70% cash.

o Equity: this is the part I'm most uncertain about, to be honest. I've seen cap tables that differ vastly from one another. I don't know what your expectations are, but using your kind offer of a double-digit equity stake as a reference, I think landing somewhere between 10-15% would make me feel like I have significant skin in the game. I'm open to discussing this. How would you like to structure the vesting schedule?

77. The agreement provided was similar in many respects to those provided to the claimant. Mr Azzari was to provide services in exchange for fees, which he was to invoice for. There was a status clause saying he was an independent contractor. There was a right of substitution.

78. The services description was:

Provide services as described below aligned with the Chief Technology Officer role, together with NatureAlpha's Founder Vian Sharif and the NatureAlpha team, with a view to delivering on client requirements and business growth objectives

79. On 10 March 2023 there was a further agreement in similar terms providing for a greater number of hours of work (55 hours per month rather than 30) for a higher fee.

80. Dr Sharif said that Mr Azzari used his own equipment and paid his own expenses. The respondent did not dictate how or when he did his work save that there was an agreement as to an approximate number of hours a month. There was no provision for holiday, sick pay or pension. Mr Azzari also introduced two other contractors to perform work previously done by Daedalus.

81. Dr Sharif said that it became clear that Mr Azzari did not have the right financial services background. As a result of that and other issues, Mr Azzari ceased providing services to the respondent around August 2023.

82. The claimant said that Mr Azzari was trained by her on company processes, the company product, the methodologies and the existing platform. He himself oversaw other developers.

83. The claimant and Dr Sharif both gave evidence about similarities and differences in the work of the alleged comparators which was not relevant to the issues I had to decide at the preliminary hearing and which I accordingly do not make any findings about.

Law

Employment Status

84. Section 230 ERA 1996 provides that:

‘(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” (except in the phrases, “shop worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under) –

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or

perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.'

85. In order to qualify as a 'worker' for ERA purposes an individual has to show:

- that there is an express or implied contract with the 'employer';
- that the individual undertook to do or perform work or services personally;
- that the work or services were not performed on the basis that the recipient of the work or services was a customer or client of his or her business or profession.

86. Section 83 of the Equality Act 2010 says :

(2) "Employment" means—

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

87. When considering employment status under the Employment Rights Act 1996, there is not a single determinative test which a tribunal is required to apply. Instead, it is a matter of judgment based on the particular facts and circumstances in each case. I should consider such matters as:

(i) whether there is mutuality of obligation such that the respondent is obliged to provide the claimant with work and the claimant is obliged to undertake work when required to do so;

(ii) whether the obligation is one of personal service;

(iii) the degree to which the claimant has agreed to be subject to the respondent's control;

(iv) whether the other provisions of the contract / nature of the relationship are consistent with it being a contract of service.

88. So far as the requirement for personal service is concerned, the key question is whether the individual has a right not to provide personal service but to substitute some third party otherwise than on an occasional or limited basis. It is not sufficient, for example, that the individual has the right (or is required) when unable to work to arrange a substitute from a list approved by the employer. Such an individual is still an employee: MacFarlane and anor v Glasgow City Council [2001] IRLR 7, EAT. In that case it was also relevant that on such occasions, the employer paid the substitute direct rather than paying the employee who would then pay the substitute.

89. So far as control is concerned, what is required is that there be a sufficient degree of control to make the relationship one of employer and employee. This does not necessarily mean that there needs to be day-to-day control over work (see eg White and anor v Troutbeck SA [2013] IRLR 949, CA where the claimants were found to be employees notwithstanding that the absentee owners of the farm estate had delegated to them the day-to-day running of the farm). Nor does it mean that the employer must be able to direct *how* an employee does their work. As Lord Phillips put it in Catholic Child Welfare Society and ors v Institute of the Brothers of the Christian Schools and ors [2013] IRLR 219, SC, *"Many employees apply a skill or expertise that is not susceptible to direction by anyone else in the company that employs them. Thus the significance of control today is that the employer can direct what the employee does, not how he does it."* What is needed is something more than simply a right to terminate the engagement. Evidence of control may be demonstrated through such matters as the applicability to the individual of performance, disciplinary or grievance procedures, and requirements in relation to working hours, holidays and sick leave.

90. The necessary components of an employment relationship under the Equality Act 2010 include a contract and personal service . As to what else is required, in Jivraj v Hashwani [2011] ICR 1004, SC, the Supreme Court said that the essential questions for determining whether a person is in 'employment' for the purposes of the discrimination legislation are whether:
- on the one hand, the person concerned performs services for and under the direction of another person in return for which he or she receives remuneration, or
- on the other hand, he or she is an independent provider of services who is not in a relationship of subordination with the person who receives the services.

91. Lord Clarke said that these were broad questions, the answers to which depend on the circumstances of the particular case and a detailed consideration of the relationship between the parties.

92. It is clear from case law that the definition of employee in the Equality Act 2010 is the same in substance as the definition of worker in the Employment Rights Act 1996. In Bates van Winkelhof v Clyde and Co LLP and anor (Public Concern at Work intervening) [2014] ICR 730, SC, which concerned the definition of worker in the Employment Rights Act 1996, Lady Hale stated: 'the law now draws a distinction between two different kinds of self-employed people. One kind are people who carry on a profession or a business undertaking on their own account and enter into contracts with clients or customers to provide work or services for them. …The other kind are self-employed people who provide their services as part of a profession or business undertaking carried on by someone else'. She said that although the definition of employment in the Equality Act 2010 'does not include an express exception for those in business on their account who work for their clients or customers', that had been introduced by way of the requirement for subordination discussed in Hashwani. Subordination is not however a

freestanding and universal characteristic of a worker and other factors such as integration into the business might indicate worker status.

93. Where the parties have expressly agreed that their relationship is to be one of something other than employment, that is relevant but not determinative. The Tribunal must scrutinize the true nature of the relationship in order to determine whether the terms of the written agreement reflect the true nature of the relationship between the parties or whether the written agreement seeks to characterize the relationship in an artificial way. In this respect, the relative bargaining power of the parties must be taken into account: the terms of any agreement will be more readily accepted as representing the true nature of the agreement where the parties' bargaining power is relatively equal. These are the principles to be derived from the Supreme Court's decision in Autoclenz Ltd v Belcher and ors [2011] UKSC 41, [2011] ICR 115:

In my judgment the true position, consistent with Tanton, Kalwak and Szilagyi, is that where there is a dispute as to the genuineness of a written term in a contract, the focus of the enquiry must be to discover the actual legal obligations of the parties. To carry out that exercise, the tribunal will have to examine all the relevant evidence. That will, of course, include the written term itself, read in the context of the whole agreement. It will also include evidence of how the parties conducted themselves in practice and what their expectations of each other were. Evidence of how the parties conducted themselves in practice may be so persuasive that the tribunal can draw an inference that that practice reflects the true obligations of the parties. But the mere fact that the parties conducted themselves in a particular way does not of itself mean that that conduct accurately reflects the legal rights and obligations. For example, there could well be a legal right to provide a substitute worker and the fact that that right was never exercised in practice does not mean that it was not a genuine right …

[Per Smith LJ as approved by Lord Clarke]

Equality Act equal pay comparators

94. Comparators for equal pay claims are defined in section 79 Equality Act 2010 which says, so far as relevant to these proceedings:

(1) This section applies for the purposes of this Chapter.
(2) If A is employed, B is a comparator if subsection [(3), (4), (4A) or (4B)] applies.
(3) This subsection applies if—
(a) B is employed by A's employer or by an associate of A's employer, and
(b) A and B work at the same establishment.
(4) This subsection applies if—
(a) B is employed by A's employer or an associate of A's employer,
(b) B works at an establishment other than the one at which A works, and

(c) common terms apply at the establishments (either generally or as between A and B).
(4A) This subsection applies if a single body—
(a) is responsible for setting or continuing the terms on which A and B are employed, and
(b) is in a position to ensure equal treatment between A and B in respect of such terms.
(4B) This subsection applies if the terms on which A and B are employed are governed by the same collective agreement.

95. In all cases the requirement is for 'employment'. The other parts of the section relate to types of relationship which are not in play in this case such as the holding of public office or of the office of constable.

Rule 38(1)(b) Employment Tribunals Rules of Procedure 2024

96. This subrule provides that a claim or response (or part) may be struck out if 'the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent… has been scandalous, unreasonable or vexatious'.

97. In order to strike out for unreasonable conduct, the tribunal must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps or that it has made a fair trial impossible; in either case, striking out must be a proportionate response — Blockbuster Entertainment Ltd v James 2006 IRLR 630, CA:
The first object of any system of justice is to get triable cases tried. There can be no doubt that among the allegations made by Mr James are things which, if true, merit concern and adjudication. There can be no doubt, either, that Mr James has been difficult, querulous and uncooperative in many respects. Some of this may be attributable to the heavy artillery that has been deployed against him – though I hope that for the future he will be able to show the moderation and respect for others which he displayed in his oral submissions to this court. But the courts and tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably. It will be for the new tribunal to decide whether that has happened here.

98. The meaning of 'scandalous' was considered by the Court of Appeal in Bennet v London Borough of Southwark [2002] IRLR 407:
The trinity of epithets 'scandalous, frivolous or vexatious' has a very long history which has not been examined in this appeal, but I am confident that the relevant meaning is not the colloquial one. Without seeking to be prescriptive, the word 'scandalous' in its present context seems to me to embrace two somewhat narrower meanings: one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process.

99. In A-G v Barker [2000] 1 FLR 759, the Court of Appeal said about vexatious conduct:
The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process

100. In considering whether a claim should be struck out on the grounds of scandalous, unreasonable or vexatious conduct, a tribunal must generally consider whether a fair trial is still possible: De Keyser Ltd v Wilson [2001] IRLR 324, EAT. Conduct such as deliberate flouting of a tribunal order, can lead directly to the question of a striking-out order, however in ordinary circumstances, neither a claim nor a defence can be struck out on the basis of a party's conduct unless a conclusion is reached that a fair trial is no longer possible.

101. In Bolch v Chipman 2004 IRLR 140, the EAT set out the steps that a tribunal must ordinarily take when determining whether to make a strike-out order:
- before making a striking-out order under what is now rule 38(1)(b), an employment judge must find that a party or his or her representative has behaved scandalously, unreasonably or vexatiously when conducting the proceedings;
- once such a finding has been made, he or she must consider, in accordance with *De Keyser Ltd v Wilson* whether a fair trial is still possible, as, save in exceptional circumstances, a striking-out order is not regarded simply as a punishment. If a fair trial is still possible, the case should be permitted to proceed;
- even if a fair trial is unachievable, the tribunal will need to consider the appropriate remedy in the circumstances. It may be appropriate to impose a lesser penalty, for example, by making a costs or preparation order against the party concerned rather than striking out his or her claim or response.

102. In Emuemukoro v Croma Vigilant (Scotland) Ltd and ors [2022] ICR 327, EAT, Choudhury P said:
I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees [2000] 2BCLC 167 set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not

confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

It was a highly relevant factor, as confirmed by the Court of Appeal in Blockbuster, that the strike-out application was being considered on the first day of the hearing. The parties were agreed that a fair trial was not possible in that hearing window. In other words, there were no options, such as giving the respondents more time within the trial window to produce its witness statements or prepare a bundle of documents, other than an adjournment. If adjournment would result in unacceptable prejudice (a conclusion that is not challenged by the respondents), then that leaves only the strike-out. The tribunal did not err in considering the prejudice to the respondents; indeed, it was bound to take that into account in reaching its decision.

103. The EAT in Bayley v Whitbread Hotel Co Ltd t/a Marriott Worsley Park Hotel and anor EAT 0046/07 emphasised the importance of a tribunal clearly analysing whether a fair trial is possible. That was a case in which the claimant's father, representing him, withheld portions of expert reports on the claimant's dyslexia.

Rule 38(1)(a) Employment Tribunals Rules of Procedure 2024

104. Under rule 38(1)(a) of the Employment Tribunals Rules of Procedure 2013, a claim or response may be struck out on the basis that it has no reasonable prospects of success.

105. In heavily fact-sensitive cases, such as those involving whistleblowing or discrimination, the circumstances in which strike out is appropriate are likely to be rare: Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108, EAT.

106. The test is not whether the claim / response is likely to fail. It is not a test that can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is a high test: Balls v Downham Market High School and College 2011 IRLR 217, EAT.

107. It is crucial when considering strike out to take the party's case at its highest; where there are core issues of fact which turn to any extent on oral evidence, these should not be decided without an oral hearing: Mechkarov v Citibank NA [2016] ICR 1121.

Submissions

108. I had written submissions from the respondent and oral submissions from both parties. I have taken these into consideration in their totality but summarise the main points made by each party below.

Respondent

109. On behalf of the respondent, Ms Garner said that the respondent was a startup at the time with no resources to take on employees. It had to buy in services from outside and never intended to create employment relationships. The notes of the initial discussion provided by the claimant did not bear out the claimant's claim that it was akin to a job interview.

110. The consultancy agreements may have started with a template provided by the respondent but they incorporated terms the claimant requested, She did not ask to be an employee or worker. The agreement did not require her to work particular hours; there was no provision for sick pay or holiday. The claimant clearly expected that there could be substitutions as evidenced by her cross examination of Dr Sharif about the occasion when she said Dr Sharif was looking for some of her work to be done by her cousins.

111. The claimant was able to pursue other activities which were not in conflict with her work for the respondent. She agreed to a term which made clear her status was that of an independent contractor.

112. The respondent submitted that the only concluded agreements were the two signed agreements.

113. In terms of use of titles such as CTO and chief scientific officer, at a time when Dr Sharif was seeking to get investment, she presented the organisation in a way which reflected how it might come to look rather than what it actually was at that time. There was no reason why a group of consultants could not be described as a team.

114. Ms Garner said there was not a relationship of subordination. Rather the working relationship was a collaborative one. The WhatsApp messages showed the claimant putting forward strategic suggestions.

115. As to comparators: there were simply no contracts of any sort with the individuals who worked under the Daedalus contracts. Mr Azzari was clearly a consultant.

116. As to the claimant's application to strike out, the emails between 9 and 12 February 2022 and attached contract which the claimant relied on and which

the respondent accepted were extant had not been part of the claimant's own original disclosure. The respondent had not objected when the claimant presented the further documents in her own supplementary bundle.

117. The conduct by Dr Sharif did not meet the test for strike out and there was no good evidence that the document was forged. The business was a startup and there were various versions of the February 2022 agreement, none of which was ever signed. Dr Sharif had simply produced the version she had, believing it was one which was provided to the claimant. It was much more likely that she made the error she described than that she deliberately misled the Tribunal. A fair trial was still possible.

Claimant

118. The claimant applied to strike out the response on the basis that she said that:

- the document in the bundle purporting to be her consultancy agreement from February 2022 was a fabrication;

- the respondent had refused to include in the joint bundle the email trail to which the version of the February 2022 consultancy agreement which she had been sent was attached and that version of the agreement.

This was unreasonable conduct by the respondent.

119, The claimant also submitted that the respondent's defence had no reasonable prospects because Dr Sharif had relied so heavily on a forged document.

120. In terms of employment status, the claimant said that the respondent did not want her to be categorised as an employee because that would have tax implications and the respondent's finances were tight. Once there was more money as a result of further investment, they were happy to characterise her as an employee.

121. There was a concluded agreement in February 2022 and she had worked under that agreement subsequently. The reality of the situation was that Dr Sharif did have control over what the claimant did and when she carried out the work; she gave the claimant direction in meetings and set deadlines. The sheer number of hours the claimant worked was itself evidence of subordination.

122. The claimant was part and parcel of the organisation. She was the second person after Dr Sharif and she supervised other data scientists, She was introduced as the CTO and then as the CSO.

123. She did no other work and had no other clients or customers and was not in business for herself. If she was not available it was the respondent which

would approve and hire a substitute. She had never herself hired or paid a substitute.

124. So far as comparators were concerned, there was no entity called Daedalus in February 2022. There was no documentary evidence to show that Mr Srivastava and Mr Kato planned to set up the company Daedalus in February 2022.

125. Mr Srivastava and Mr Kato were referred to as members of the team and by the titles CTO and COO. They were treated as individuals.

126. The claimant appeared to accept that Mr Azzari was an independent contractor but said that he nonetheless could be an equal pay comparator.

Conclusions

Status of the claimant

Equality Act 2010

127. So far as where the relevant contract was to be found, I concluded that the version produced by the claimant dated February 2022 had the status of a concluded agreement save for the clause about shares, where the agreement was to be finalised as to number at a later date. This was the effect of the email chain described above. The fact that the parties did not continue to exchange drafts showed that both understood that they had reached a concluded agreement.

128. This was a contract to act as the respondent's CTO, subsequently varied to CSO. This was a role within the organisation rather than simply a set of services to be provided. This was later supplemented but not replaced by the additional contract from November 2022 for specific services.

129. I considered that this was a contract for the claimant personally to do work. Although there was a substitution clause in the earlier contract, there was none in this contract. It did not appear that either party genuinely expected substitution to take place. There was no evidence of the claimant actually sending a substitute. The situation with the claimant's cousins appeared to be a situation in which there was some specific work the claimant would otherwise have been doing and which needed doing to a deadline when Dr Sharif was concerned the claimant might not be available. It did not seem have been understood at the time that the claimant herself was responsible for locating a substitute or paying the substitute from her own earnings.

130. Significantly the claimant was being held out to the world (in particular clients and investors) as performing a specific high level role in the respondent; it was difficult to see how she could have substituted someone for herself in that

role. Given the modest rates the claimant was performing the work for, it is difficult to see that substitution would have been economic. I concluded that the substitution clause had been put in the original contract to seek to avoid an appearance that the claimant might be an employee and in reality there was a contract in place for the claimant's personal services throughout the period she was engaged to work for the respondent. The contracts appeared to be largely off the peg drafts designed to achieve a particular outcome. I considered carefully whether the fact that the claimant had agreed to be described as an independent contractor and that she was not an employee or worker should carry much weight. There is a difference between agreeing arrangements which do not create an employment relationship and agreeing a label which does not otherwise fit the relationship. I concluded that what happened in this case fell into the latter category. I accepted that the claimant's bargaining power relative to the respondent was greater than that of workers in many situations but it was still necessary to look at the reality of the situation. I did not consider the label and what it said about the parties' intentions was meaningless however, and I revisit this matter when considering whether the parties intended to enter into an Employment Rights Act employment relationship.

131. The claimant was significantly integrated into the respondent given that she was held out as CTO / CSO and given that she supervised the work of others. So far as control was concerned, as an expert in her own area, I accepted that much of the detail of the claimant's work would be for her to manage but she clearly had constant input from Dr Sharif. She did not in fact perform work for anyone else but was available full time to the respondent. The relationship could fairly be characterised as one with a degree of subordination and a high degree of integration into the business.

132. Although the claimant was not provided with a leave allowance or holiday or sick pay and was responsible for her own tax arrangements, these seemed to me to be less significant in the balance than the features identified above, particularly because these less central aspects of the relationship are often not provided for in arrangements where an inappropriate label is being placed on a relationship which on analysis appears to be an Employment Rights Act worker / Equality Act employee relationship. I concluded that the claimant was an Equality Act employee from the time the she entered into the CTO contract in February 2022 for the reasons outlined.

Employment Rights Act 1996 employee status

133. Was the claimant also an employee within the meaning of section 230(1) Employment Rights Act 1996? I bore in mind that determining that question involves looking at all of the possibly relevant factors holistically. I have found

that there was a contract for the claimant to do work for the respondent personally and there was a degree of subordination. I concluded however that there was not ultimately a sufficient degree of control for the claimant to be considered an employee within the stricter Employment Rights Act definition. When looking at a skilled expert worker of the claimant's kind, one is looking at whether there is a sufficient framework of control not whether the employer could or did control the detailed tasks performed by the worker.

134. In the claimant's case, it appeared that Dr Sharif could not have any detailed control over the expert technical work the claimant was carrying out with data although the ends to which that work was directed were clearly the ends dictated by the respondent and, as described above, the claimant was received significant input from Dr Sharif and had to attend meetings and work to deadlines. In that sense the claimant did not differ from any highly expert worker engaged to carry out a task using expertise not possessed by the person commissioning the task.

135. Was there a sufficient framework of control? The claimant was not subject to any disciplinary or performance management processes. She could have, without being in breach of her contract, taken such holiday as she wished, subject to delivering the services required by her contract. She could carry out her work when and where she chose, subject, it appeared, to attending some meetings at the times scheduled and meeting some internal deadlines. The fact that, in the events that happened, the claimant said she was working very long hours in order to complete the work required, did not seem to me to alter the fundamental character of the agreement which in general gave her a significant degree of freedom as to how and when she carried out the work. The arrangements around pay and tax provide some further support for the view that the claimant was not an employee in the required sense although they would certainly not have been sufficient on their own. The claimant's (albeit constrained) freedom to engage in other work was another factor in the balance.

136. Bearing all of these matters in mind, it seemed to me that the arrangement fell short of an employment relationship particularly because of the control aspect. It seemed to me from the evidence that there was something of a culture in the sector of relationships which fell short of (Employment Rights Act) employment relationships, which gave some flexibility to both the startups and to those who worked for them as to the level of commitment which was being entered into. I considered, looking at the correspondence in this case and the labels in the agreements she entered into, that the claimant herself had accepted a level of flexibility about the arrangements. Although the labels were not conclusive as to the nature of the relationship where the reality differed, they did provide some limited evidence as to the parties' understanding about the effect of the agreement they had reached. As I have

found, it was a relationship which fell between the relationship enjoyed by an independent contractor and that of a traditional employee, in the middle ground occupied by Employment Rights Act workers / Equality Act employees.

137. For all of these reasons, I concluded that the claimant was not an employee of the respondent within the meaning of the Employment Rights Act 1996.

Status of proposed comparators

The Daedalus individuals

138. I accepted that the relevant contract was ultimately with Daedalus as a company although in the first instance it appears to have been with Mr Kato and Mr Srivastava trading under the name Daedalus.

139. There were some significantly blurred lines in relation to Mr Srivastava and Mr Kato, particularly because they were being held out to the world as performing particular roles in the respondent organisation and there was at least some degree of integration. It is possible, although I reach no conclusions on this, that arrangements of this sort may be more common where technology services are being provided to startup companies. That certainly would be consistent with the services advertised by Daedalus as described above. There was a tension between that aspect of the situation and the provisions of the written agreement which did not require particular individuals to be provided to perform the services. I heard no evidence as to what Dr Sharif would have done if Daedalus had, for example, simply sent another individual to act as CTO in a meeting with clients or investors, although it appeared that Daedalus would have had a contractual right to do so. However it was also clear that under this agreement Daedalus could and did provide services from other Daedalus staff in the person of Mr Emokpae.

140. Ultimately, and looking at the reality of the situation on the basis of the evidence in front of me, the contracts in place were contracts with (in the first instance) a collective of individuals and then shortly after with a limited company. There was provision for a fee for the services and there was no suggestion that it was for anyone other than Daedalus to decide how that fee was apportioned between those who performed the work. I had no evidence as to whether Daedalus was actively marketing its services whilst performing services for the respondent to others but Companies House entries showed that the company remained active and was clearly advertising its services in late 2023.

141. I had no evidence that Mr Kato and Mr Srivastava were obliged individually to account for their time to the respondent (as opposed to Daedalus being obliged to ensure that the services were provided).

142. I did not have evidence on the basis of which I could properly conclude that the contracts in place were a fiction and that in fact there were contracts between Mr Kato and Mr Srivastava on the one hand and the respondent on the other for Mr Kato and Mr Srivastava to provide their personal services. It may well be that there are occasions where there are express agreements of this sort with a company where the reality of the situation is quite different. However, the evidence in this case did not support such a finding.

143. In those circumstances, I was not able to conclude that Mr Kato and Mr Srivastava were employed by the respondent within the meaning of the Equality Act 2010.

Mr Azzari

144. Mr Azzari himself was clear in the email discussion I saw that he wanted there to be two phases to his relationship with the respondent – the first phase a more arm's length consulting arrangement where he retained a substantial involvement with another organisation, the second phase an employment relationship.

145. Mr Azzari's agreement did not provide for him to provide personal service. I simply did not have sufficient evidence to conclude that the substitution clause in his case was a fiction. I had no evidence that the clause was ever operated and there was evidence that Mr Azzari was recruited because of his particular background and skillset but this was insufficient evidence on the basis of which to conclude that Mr Azzari would not have been entitled to perform the services through a substitute.

146. It also seemed to me that the arrangements with Mr Azzari differed from those with the claimant. Mr Azzari was performing a set amount of work for the respondent alongside his existing and more substantial role for another company. He had negotiated that arrangement and indeed the status himself – he did not want and the respondent did not require some greater level of integration and subordination during phase one of their relationship.

147. In the circumstances I did not conclude that Mr Azzari was employed by the respondent within the meaning of the Equality Act 2010 and therefore he was not capable of being a comparator for equal pay purposes.

<u>Strike out</u>

148. I considered that there was a high degree of carelessness by Dr Sharif in relation to disclosure of documents and the evidence she provided in her witness statement based on the documents she had disclosed. If, as she

said, there were various versions of draft contracts being sent around at different times to different individuals, it behoved her to find what she could, to properly identify what she had found insofar as she could, and not simply to rely on a version which suited the respondent's case but which, it was ultimately conceded, had never been provided to the claimant.

149. I ultimately accepted, however that although her approach was negligent and unreasonable, it was not deliberate. I did not consider I had evidence on the basis of which I could conclude that the document put forward in the respondent's bundle was a deliberate forgery. The explanation given by Dr Sharif was plausible and seemed to me to be explicable by the circumstances Dr Sharif described - the context of the respondent being a startup with very limited resources - and there was no independent evidence that the document was forged.

150. Whilst Dr Sharif's approach could have made a fair trial impossible, it had not in fact done so in relation to the preliminary issues I had to decide, because the claimant had provided the correct document and I had made findings based on the correct position. I gave anxious consideration to the question of whether I should conclude that there was a risk that there had been further failures in relation to disclosure which may have rendered a fair trial of these issues impossible but I did not reach any such conclusion. In particular, I had no reason to suspect there were other contractual documents in relation to the proposed comparators beyond those provided. The contracts with the proposed comparators were signed so there was not a situation, as there was with the claimant, where there was a period not covered by a signed agreement. Had that been the case, there might have been questions about which of a number of competing drafts contained the agreement. I also did not conclude that Dr Sharif was likely to continue to fail to carry out disclosure with care, having had the errors in relation to her previous efforts brought to her attention. I concluded that this was not an exceptional case where strike out was appropriate despite a fair trial being possible.

151. The claimant also submitted that I should find that the respondent's defence had no reasonable prospects because it depended on Dr Sharif's false evidence. I have in any event resolved the issue of her own status in the claimant's favour at least insofar as the Equality Act 2010 claims are concerned. This would not have been a suitable case for strike out on the merits because the respondent's defence to the claim, taken at its highest on the basis of the pleadings, could not be said to have no reasonable prospect of success in relation to the claimant's status and I have determined the issue of the comparators' status in the respondent's favour. The claimant did not make submissions based on the merits of the substantive issues in the claims and I have not considered the application on that basis.

Disposal

152. There will be a case management preliminary hearing to consider the onward management of the claimant's remaining claims.

153. It appears to me that the likely effect of my decisions is that the Tribunal lacks jurisdiction to hear the claimant's claim for breach of contract and that her equal pay claim must also fail, but I have not heard submissions on the consequences of my findings on the preliminary issues. I would invite the parties to send in any written submissions about the effect of my findings within 14 days of this Judgment being sent to the parties. I will decide the matter on the basis of correspondence unless the parties or either of them invite me to convene a hearing and it appears appropriate to do so.

Employment Judge Joffe

Date: 25 May 2025

Sent to the parties on:

29 May 2025

…….
For the Tribunal Office:

……..……..