EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106045/2024

Held in Glasgow via Cloud Video Platform (CVP) on 2 & 3 April 2025

Employment Judge R McPherson

Ms J Petonnet Vincent	**Claimant** **Represented by:** **Ms D Sanchez -** **Lay Representative**
HopeFull (SCIO) (Charity No SCO49842)	**Respondent** **Represented by:** **Mr R Peoples -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claims are dismissed for want of jurisdiction.

REASONS

Introduction

1. The claimant's ET1 was presented on 16 July 2024 against the respondent Scottish Charitable Incorporated Organisation (SCIO) following ACAS Early Conciliation (ACAS certificate, identifying receipt of EC notification on 13 July 2024 and the issue of the ACAS Certificate on 15 July 2004).

2. ET3 was accepted 14 August 2024. The ET3 at paragraph 35 quoted EAT decision **Chandhok v Tirkey** [2015] ICR 527 [**Chandhok**] paragraph 16 *"The claim, as set out in ET 1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary*

function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement nor a document, but the claims made…". and at paragraph 39 of the ET3 set out the claimant did not plead any alleged facts from which the Tribunal could hold that claimant was at any time employed by the respondent within the meaning of s83 of the Equality Act 2010.

3. Following the presentation of ET1 and receipt of ET3, the Tribunal on 23 August 2023, directed the claimant to provide *"full details of her claim".* Through her then-representative, the claimant provided a 3-page Particulars of Claim (the claimant's September 2024 Further Particulars) referencing the Equality Act 2010, which also referred to an accompanying undated and unsigned claimant statement extending to 57 paragraphs. Within the September 2024 Further Particulars, it set out that the claimant served as an employee giving written notice, as set out at paragraph 2, including sub paragraphs A to L and at paragraph 3, of the alleged facts relied upon in respect of same.

4. On 20 November 2024, at case management Preliminary Hearing at which the claimant was represented by her current representative Ms Sanchez Lay Representative and the respondent was represented by Mr Peoples Solicitor, the nature of the claim asserted was explored and the Tribunal identified that the claimant sought to pursue claims under ss13 and 26 of the Equality Act 2010 (EA 2010) under the protected characteristic of sex (para 5, 6, 7 8, 9 and 10 of the subsequent Note).

5. At the case management Preliminary Hearing it was identified that the respondent disputes the claims made and as set out in the subsequent Note (para 13), the first aspect of jurisdiction raised by the respondent was whether EA 2010 extended where the material events appear to have taken place in Ukraine, it was agreed that this Preliminary Hearing was appropriate. Further, it being noted that the respondent also argues that the claimant was not an employee for the purposes of s83 EA 2010, it was determined that this should also be determined at this Preliminary Hearing.

6. A separate question of possible amendment for the claimant was identified.

7. The Tribunal identified that this Open Preliminary Hearing should determine (para 24)

   (i) Whether the Tribunal has jurisdiction over the claims made.

   (ii) Whether the claimant was an employee under s. 83 EA 2010. and

   (iii) If an application for amendment is made and opposed.

8. Subsequently, the Tribunal Order and Note of the Tribunal, was issued to the parties on 25 November 2024 (the November 2024 Order and Note), identifying this hearing to be held remotely to address:

   (i) territorial jurisdiction,

   (ii) employee status, and

   (iii) any opposed application to amend.

9. At this Preliminary Hearing, the claimant was again represented by Ms Sanchez, Lay Representative and the respondent was represented by Mr Solicitor. No application for amendment was made.

10. For this hearing, the respondent had prepared a Joint Bundle (the Bundle). The Bundle included the claim and response (including ET1, ET3 and claimant Further Particulars), the November 2024 Order and Note and further documents as set out in the Index to the Bundle.

11. Two witness statements were provided for this hearing; The first being that of the claimant (headed *"Abridged for the Preliminary Hearing on Jurisdiction"* extending to 4 pages was provided at No 24 of the Bundle [the claimant's January 2025 statement]) within which she set out her position that although formally categorised as a volunteer she argued that that her relationship with the respondent demonstrated all the hallmarks of an employment relationship under UK law. The second witness statement provided was that of Mr Troels Bugge Henriksen, which was provided on 25 February 2025. Both the

claimant and Mr Henriksen attended as witnesses to speak to their respective statements.

12. At the outset of this Hearing, the respondent noted that certain documents provided within the Bundle, No 25 Index of Jurisdictional Events and No 26 Key Timeline, were not the subject of agreement. In particular, while the respondent had included them in the Bundle (as provided by the claimant in time), neither document represented an agreed position from the viewpoint of the respondent.

13. Further, at the outset of this hearing, the respondent opposed the claimant's proposed addition of 3 further documents supplemental to the Bundle.

14. The **first document** was said to be a transcript of an audio file (.ogg) in which the audio was contained in the existing Bundle (No 27). The transcript was provided by the claimant in response to the Tribunal identifying that it would not have the capacity to “play” the Tribunal and having directed parties (to the extent that it was considered relevant and was to be referred to) provide an agreed transcript by letter on 26 March 2025. That transcript which was said be of the recording (on 4 January 2025 of a Mr Fisher), was not agreed and argued for the respondent, not to be relevant for the current hearing. The Tribunal admitted the first document, subject to reserved arguments on relevance. It subsequently transpired that the narrative set out was contained within the existing Bundle at page 370 (within a table headed Exhibit Reference… labelled as *transcription/Excerpts* pages 367 to 374 of the Bundle, which the respondent in closing submission objected as not being contemporaneous evidence and not having been spoken to in evidence.

15. The **second document** was said to be a respondent Safeguarding Policy (issued under a former name of the respondent charity, having the same charity number) and bore to be published 31 August 2023. The respondent opposed the introduction of the policy, including on the basis that it was too late. For the claimant, it was argued that the claimant had only recently become aware of the same, and it was argued to be relevant to the issues for

this Tribunal. The Tribunal admitted the second document, subject to reserved arguments on relevance. No argument was made at the conclusion.

16. The **third document** was the respondent's Annual Report and Financial Statement for year ended 30 April 2024 (the latest Annual Report). Again, inclusion was opposed. For the claimant it was clarified that the document had only just been made public, reference was sought to be made was to certain figures at page 24 of the latest Annual Report shown as Net Movement in funds which was subsequently clarified to figures shown at foot of page 23 as Cash (absorbed by)/generated from operations. The Tribunal admitted the third document, subject to reserved arguments on relevance.

17. No Amendment was presented before or during this hearing, and as such, the issues were restricted to territorial jurisdiction and employee status.

18. No Findings of Fact are made determining the merits or otherwise of the claimant's substantive allegations under ss 13 and 26 EA 2010, which would be reserved to a Final Hearing if the Tribunal concluded it had territorial jurisdiction and the claimant's status was such that the Tribunal had jurisdiction.

19. Witness evidence was taken remotely as directed in the November 2024 Order and Note para 29 (consistent with revised Presidential Guidance on taking evidence abroad 2025), the claimant being resident in the USA, and was concluded on the first day.

20. Oral submissions for the respondent commenced on the second day, expanding on the Written Skeleton Argument for the Respondent provided at the outset of the second day.

21. For the claimant, Skeleton Arguments for the claimant (dated 31 March 2025), having been made available to the Tribunal Judge on the second day, were expanded in the afternoon by the claimant's written Final Written Submissions dated 3 March, which were also orally expanded upon.

Findings of fact

22. The following findings of Fact are made to deal with the Preliminary Issues identified above.

23. In January 2020, the respondent which is based in Perthshire, then known as Siobhan's Trust, was established as a Scottish Charitable Incorporated Organisation (SCIO); it was not registered as a charity in Ukraine.

24. Mr Troels Bugge Henriksen, who was based in Dundee, had volunteered with the respondent in March 2023, and had been the respondent's Chief Executive Officer from May 2023 to September 2024, had also been a Trustee from September 2023 to 31 December 2024 and had been unpaid in those roles.

25. The respondent considers all paid staff to be self-employed contractors. Mr Henriksen has no knowledge of what would be required under Ukrainian law for employees.

26. From early in its history the respondent had a simple volunteer form (the Original Simple Volunteer Form), that was subsequently updated to what the respondent considered was more comprehensive in September 2023 (**the September 2023 Volunteer Form**) in which the respondent sought information including emergency next of kin contact information and set out more information. That September 2023 Volunteer Form was subsequently transformed into an online Google Form in March 2024, although it was not otherwise materially altered (**the March 2024 Volunteer Application Form**).

27. In late **February 2022**, following Russia's invasion of Ukraine on 24 February 2022, the charity decided to move its primary focus to supporting war-torn communities in Ukraine, providing community engagement and freshly baked pizzas to those in need. It was set up in Ukraine by the local field staff in Ukraine. In the period of its operation, there were up to 500 volunteers, who attended unpaid; it would not have been able to operate in the absence of volunteers. Within that number, they had hundreds of volunteer drivers. Around 42 % of volunteers elected to volunteer again.

28. At the start of the war, in late February 2022, the respondent started with an intention of going to the Ukrainian border for 3 months with 4 UK-based individuals driving trucks to Ukraine with pizzas. Thomas (known as Tom) Hughes joined along with the individuals at this time. At this time, a random group of volunteers joined to help.

29. In late February 2022, the claimant is a French national residing in the USA started volunteering at the Polish border, and as set out in March 2024 Volunteer Application Form coming across the respondent quite randomly at the Medyka (Polish) border in 2022.

30. The claimant was not provided at this time with the original simple volunteer form, nor was she subsequently supplied with the September 2023 Volunteer Form. The claimant became aware that the respondent organisation was based in the UK.

31. Mr Hughes was the Operational Leader in Ukraine from March 2022 until October 2024 and was based there.

32. Mr Kevin Fisher was the second in command to Mr Hughes, acting up in his absence and was also based in Ukraine. The local Operational Leaders could not operate outside the purposes set for the charity within the UK, although they had discretion to operate in Ukraine on how they operated, and that extended to helping at dog shelters without input from the UK. The only limits on discretion were that they could not help in military operations.

33. The respondent had further staff in Ukraine, including a Ukrainian driver of their HGV truck in the Eastern Team, a further Ukrainian working for the Eastern Team and a volunteer and site co-ordinator based in Lviv, Volodymyr. Staff in Ukraine had prepayment (debit) cards provided to them and could additionally, where they incurred expenses, seek reimbursement from the UK-based bookkeeper.

34. In the UK (Scotland), the respondent staff included Mr Jo Fox-Pitt as Volunteer Co-Ordinator, Liz Elsworthy as Bookkeeper and Nigel Harling, whose responsibility included Safeguarding Lead. In addition, two UK-based

Trustees were considered self-employed contractors, and two UK-based Trustees, including Mr Troels Henricksen, were unpaid. At this time, all self-employed contractors' roles have been terminated. While Mr Henriksen went out to Ukraine on many occasions, none of the UK-based staff and trustees had any direct operational involvement in the day-to-day operations in Ukraine.

35. While Ms Elsworthy was the respondent's bookkeeper, for volunteers seeking reimbursement of expenses incurred, Tom Hughes in Ukraine had the discretion to approve them, although they would be processed in the UK by Ms Elsworthy, the respondent being based in the UK, who would arrange for the reimbursement to the volunteers.

36. At the relevant time, the respondent's day-to-day operational staff were based in Ukraine and were responsible for directing volunteers on a day-to-day basis.

37. In evening briefings for volunteers, the Team Leader (commonly Tom Hughes) in Ukraine would provide details about where the team was heading the following day and when the team would leave. For security reasons, the respondent trucks would usually travel in convoy to the destination site, so everyone would need to meet at a time specified (which would be identified at a briefing or via WhatsApp).

38. Teams consisted of 3 or more volunteers. None of the volunteers had specific responsibilities, and the practice was that everyone helped with everything at the site, including setting up tables, cooking and serving pizzas and occasionally playing with local kids and then packing up the site and returning to the hotel. All supervision of the claimant while she volunteered in Ukraine, took place in Ukraine. The respondent did not carry out any performance reviews of volunteers, although the Team Leader would speak to any volunteer, they felt was not carrying their weight or not being reliable in time keeping, and while they would work with the volunteer to improve on the same, they would alternately agree that the volunteer would move on. However, there was no sanction if a volunteer did not participate in activities.

39. The respondent managed a volunteer diary to ensure they had the ideal number of volunteers in each team. The respondent asks volunteers to commit to a minimum of two weeks each trip, with the UK-based Volunteer Coordinator working with those individuals who approach via the charity in the UK, to slot them into schedules.

40. Volunteers were encouraged to stay in hotels provided via the Operational Leader in Ukraine but were not required to do so. Some volunteers chose to pay for their own meals and accommodation. The respondent did not have occasion where an individual, having received accommodation and meals, decided that they wanted to be a “war tourist” and did not want to volunteer a. Had that occurred, the Operational Leader in Ukraine would have asked them to leave, however, there was no requirement for any guaranteed number of hours nor were volunteers required to do any specific duties.

41. In the period **March to April 2022**, the claimant returned to volunteer with the respondent in Poland for two weeks. The claimant was always unpaid, although during this volunteering period, she received benefits such as accommodation and food provided by the respondent. Thomas Hughes and Kevin Fisher, who operated in Ukraine for the respondent, would often book accommodation for the claimant. The claimant, while volunteering, was supervised by Thomas Hughes or Kevin Fisher in Ukraine.

42. After the initial period of volunteering, the claimant’s practice, was to make direct contact with Tom Hughes in Ukraine who she had met in her initial period of volunteering, letting him know when she was planning to volunteer in Ukraine establish if it helpful for her to do so and would look to coordinate with him on arrival and departure times. The claimant would sometimes have pre-booked flights and arrive in Ukraine.

43. While volunteering in Ukraine, the claimant had occasion to drive the respondent's vehicle, and when she had hired her own transport, she elected on occasion to use the same while volunteering. The claimant, on an occasion, agreed to drive Kevin Fisher.

44. The claimant occasionally sought reimbursement of expenses she incurred while volunteering. The respondent's process to pay expenses for volunteers was that the volunteer, such as the claimant, would seek authorisation in Ukraine from Tom Hughes, the Operation Leader in Ukraine, and the repayment would be processed in Scotland by Liz Elsworthy.

45. The claimant attended without initial contact with the Volunteer Co-ordinator in the UK. The claimant elected on occasion to bring along a hire car, although there was no need to do so as she could get transport provided locally by the Operational Leader in Ukraine.

46. While the claimant's understanding was that leaving early could jeopardise her safety due to it being a warzone, she could choose when to return to the USA. She was keen to follow instructions as she wanted to be able to return.

47. The respondent's practice was not to ask returning volunteers to sign forms after their initial period of volunteering. The respondent overlooked that the claimant had not been invited to sign the Original Simple Volunteer Form when she initially volunteered, and when subsequently returning directly to volunteer, the claimant was not invited to sign further forms by the respondent, including the September 2023 Volunteer Form. It was not until March 2024 that the claimant completed, at the direction of the respondent, the March 2024 Volunteer Application Form.

48. When driving in connection with the respondent in Ukraine, the respondent expected its volunteers to adhere to that aspect of the then-applicable **Volunteer Form**, setting out what was described as the **Driver's Protocol**.

49. In September 2022, the claimant contacted Tom Hughes directly.

50. In **September** to **October 2022**, the claimant returned to volunteer with the respondent, this time in Ukraine with the respondent, for a further two weeks initially in Lviv and then Central Ukraine. The claimant was always unpaid, although during this volunteering period, she received benefits such as accommodation and food provided by the respondent.

51. In **February 2023**, the claimant returned to volunteer in Ukraine with the respondent for a further two weeks, in eastern Ukraine. The claimant was always unpaid, although during this volunteering period, she received benefits such as accommodation and food provided by the respondent.

52. By **31 August 2023**, the respondent in the UK created a **Safeguarding Policy** (the **2023 Safeguarding Policy**) under its then name, Siobhan Trust, which sets out:

1. … It is relevant for all its trustees, charity staff & volunteers who operate for the organisation...

2. Introduction and Overview

(a) Siobhan's Trust delivers vital humanitarian aid – principally via food – to a traumatised Ukrainian population …

(b) The Trust provides humanitarian support against a background of challenging and frequently changing circumstances, within a war zone. This requires the Trust's operations and its policies & procedures that govern those operations, to be fluid, flexible and responsive.

(c) Siobhan's Trust does not have specific "employees" (as defined in employment law). While it operated originally only with unpaid volunteers, since mid-2022 the Trust does now employ (and pay) some independent consultants – working alongside (and guiding /managing) our volunteers. These paid members are referred to as "staff" for the purpose of this document.

(d) For the benefit of this document, "Staff" are paid and "Volunteers" are unpaid. The former are often volunteers who have stayed on in Ukraine and who have since taken on a more prominent role.

(e) While most of our volunteers operate in Ukraine, there is a small team of volunteers and& Staff who support our Ukraine teams from UK, principally providing organisational and administration support.

…

3.1 Siobhan's Trust of Statement of Commitment to Safeguarding

(a) Siobahn's trust is committed, and has a duty to safeguarding the staff, volunteers and Ukrainians with who it works, or those who encounter our organisation

(b) …

(c) Noone associated with the Trust should experience harm or other abuse (including neglect, exploitation or inappropriate behaviours) when involved in the activities of the Trust, or in the course of being provided with assistance and support by the Trust

(d) Siobhan's Trust has a responsibility in carrying on its activities to keep staff, refugees & volunteers safe and to protect them from abuse and/or inappropriate behaviours

(e) …

(f) …

(g) Siobhan's Trust strives to ensure that its Trustees, staff & other volunteers working on behalf of the Trust in a way which ensures that the Trust is compliant with its statutory charitable requirements, to safeguarding all its individuals and Ukrainians.

(h) ..

(i) Siobhan's Trust will also always follow the Safeguarding Guidance published by the Office of the Scottish Charity Regulator (OSCR)

3.2 Safeguarding Principles

The overarching principles that guide Siobhan's Trust approach to the work that it undertakes with volunteers & Ukranians are:

(a) The welfare and well-being of the Ukrainian population we serve are of paramount importance. Siobhan's Trust recognises that those in receipt of our support may be vulnerable and traumatised by the

impact of the conflict. It believes that great care must be taken to ensure that those we support feel safe and are always reassured. This approach underpins all activities of the trust.

(b) All trustees, staff & volunteers have access to, and have confirmed that they have read and understood this policy and are fully aware of their responsibilities. Furthermore, they have committed to this policy regarding the performance of their duties, undertaken on behalf of the trust.

4. Application and Distribution

(a) This policy applies to anyone working on behalf of Siohban's Trust

(b) ....

(c) Siobhan's Trust volunteers' understanding of this policy will be assured through briefings and adequate supervision.

5. Roles and responsibilities

The welfare and well-being of all those Ukrainians we serve -along with our volunteers are at the center of the Trust's work. The framework below sets out the division of roles and responsibilities in relation to safeguarding amongst the various stakeholders within the trust.

5.1 Board of Trustees

The Siobhan's Trust Board of Trustees are responsible for ensuring the organization has adequate resources, processes and structures in place to promote safeguarding as a key element of all activities undertaken by the Trust and for monitoring compliance with this policy

…

Annex 1

Indicators of Possible Abuse

…

Discriminatory

Discrimination is abuse that relates to difference or perceived difference, particularly with respect to race, gender, disability, or any of the protected characteristics of the UK Equality Act. As a UK charity, these requirements still apply to us while working in Ukraine.

Annex 4

Specific Rules & Policies for Staff Members

Introduction

This annex list some new procedures that are specific to staff members and are planned for implementation following endorsement by the trustees and the local Ukraine staff the aim is to implement with the opening of the full service provided by our eastern team on 1st September 2023 these policies once in place will be considered as mandatory requirements and staff members unless specifically flagged as advisory so any fragrant disregard could be considered as a disciplinary matter which could result insert suspension or dismissal a matter for the trustees to consider.

Rest Days in Theatre

While the local operational team are responsible for managing tied the programme for the sites visited and the corresponding timeline etc the trustees have directed that there should be at least one rest day per week incorporated into that programme.

During that day both staff and volunteers can relax and allow them to catch up on sleep and or undertake personal activities this should be seen as a further safeguarding control to train maintain and sustain the well-being of all those involved in the theatre.

Daily Briefings

Daily briefings are part of any good governance regime particularly in a war zone and house to the IT is acknowledged these are undertaken already the trustees are keen that they should form part or we regular routine morning and evening briefings so be it for just a few minutes each time should be part of that good governance regime led by the local operational manager to assist the local operational manager in organising immediate overnight evacuations from hotel hostels part of that evening briefing should include all staff and volunteer room numbers and location of local shelters.

53. The 2023 Safeguarding Policy was not issued to the claimant at any relevant time. While the existence of a Safeguarding Policy was broadly mentioned to the claimant in the summer of 2023, as Tom Hughes and Kevin Fisher, as Operational Leaders in Ukraine, were aware of the 2023 Safeguarding Policy and were expected to follow it, the claimant was unaware of the terms within the 2023 Safeguarding Policy. While in Ukraine, they directed the claimant on a day-to-day basis as a volunteer within Ukraine, their discussions with volunteers on mandatory rest days were in implementation of the 2023 Safeguarding Policy. The claimant found the 2023 Safeguarding Policy itself during this claim process.

54. The attendance of volunteers at Daily Briefings was an expectation as they tried to operate as a team; this was a warzone. It was not mandatory, and there was no sanction for a volunteer who did not attend. Reflecting costs incurred by the respondent (such as meeting accommodation and food) in supporting volunteers, if a volunteer did not engage by attending briefings and other expectations, they would be spoken to.

55. In **August** to **September 2023**, the claimant returned to Ukraine, volunteering with the respondent for a further period of several weeks in Eastern Ukraine. The claimant was not provided with the 2023 Safeguarding Policy at this time. The claimant was always unpaid, although during this volunteering period, she received benefits such as accommodation and food provided by the respondent.

56. In **September 2023**, the respondent from the UK introduced a more comprehensive volunteer information form (the September 2023 Volunteer Form), which was not provided to the claimant, and which was subsequently adapted into a Google Form in March 2024 (access to which was provided to the claimant in March 2024).

57. The **September 2023 Volunteer Form** set out a **Driver's Protocol** applicable if someone was a designated driver. It provided information (as traffic accidents being probably the respondent's biggest risk, describing that road conditions could be very dangerous both for vehicles and pedestrians and set out that individuals should not volunteer if they are not experienced enough) and directions that vehicles should be equipped with first aid kit, fire extinguisher, jack and spare wheel and individuals should comply with applicable speed limits and other traffic regulations. It also set out that the respondents in Ukraine carry out regular breathalyser tests in the morning, as the limits in Ukraine are very low, and participation was compulsory. While the claimant was not provided with the September 2023 Volunteer Form, the respondent expected that she would always adhere to the same.

58. By **4 January 2024**, the claimant had contacted the respondent's operational leads in Ukraine, as was her practice, in anticipation of returning to volunteer in Ukraine. On that date, the claimant received an audio message in response from Kevin Fisher. Kevin Fisher referred to what he indicated to be a *"new system"*, which was designed to keep track of where everyone was. Kevin Fisher confirmed he would do the *"bookings and everything no problem".* Kevin Fisher described *that "… But the new system is that we – you gotta get a hold of"* Tom Hughes the Operational Lead in Ukraine *"because it goes through records. Obviously they gotta keep a track of where everyone is, especially out here. So it can't just – like – people arrive- So if you just get a hold of Tom, then he – they book you in through Jo in Scotland. And all the necessary details are done. All good. – There's no issue, it's just a case of – We're trying to set a precedent of making sure we track where the volunteers are coming and where they're joining us and what they're doing . You know,*

just for logistical purposes. So if you can get a hold of Tom, tell him the days you're coming, I'll do the rest. There's no problem. Thanks…"

59. Subsequently, in **January 2024**, the claimant returned to Ukraine to volunteer with the respondent for a further period of two weeks in Eastern Ukraine. The claimant was always unpaid, although during this volunteering period, she received benefits such as accommodation and food provided by the respondent.

60. On 10 January 2024, while volunteering in Ukraine in this period, the claimant wanted a day off, and Kevin Fisher agreed. Tom Hughes messaged her, saying she was needed. The claimant was not reprimanded and was not subject to any disciplinary process.

61. In this volunteer period in Ukraine after mid-January 2024, the claimant reported an exceptionally serious allegation of sexual misconduct, said to have occurred in Ukraine to the respondent's Operations Leader in Ukraine, Tom Hughes, which allegation related to the conduct of Ukraine-based Kevin Fisher.

62. Tom Hughes advised the claimant to report to the respondent's UK-based Safeguarding Officer, Mr Nigel Harling.

63. On **8 March 2024**, the claimant sent in a statement with a detailed allegation to Nigel Harling, the respondent's Safeguarding Officer based in the UK, and Mr Harling acknowledged the same that day.

64. On **9 March 2024,** there was a further email exchange between Mr Harling and the respondent regarding the allegation made.

65. In **March 2024**, Mr Troels Henricksen provided the claimant with access to Volunteer Application Form (which by that time was a Google online form), which was headed with the respondent's new name; **Hopefull Volunteer Application V March 2024** (the March 2024 Volunteer Application Form), it having been identified that the claimant had not completed any earlier iteration. Mr Henrickson directed the claimant to complete the March 2024 Volunteer Application Form. In the March 2024 Volunteer Application Form,

the claimant identified she was a French national, that she would be available to travel 16 May to 29 May, and in response to how do you intend to travel to Lviv she indicated flight from NYC and in response to question *"how did you find out about the opportunity"* set out *"Found you randomly at the Medyka border in 2022".*

66. The March 2024 Volunteer Application Form contained what were set out as *"Operating Rules Safety Guidelines in a Warzone",* which included (on page 8)

"Be flexible and supportive of each other. It's tiring and at the end of the day we can be 'hangry' and dehydrated. If feeling emotional, take some time out. Enjoy a walk, or some music, or chat it through. If you're exhausted take a day off. You are a volunteer and need to 'put your own oxygen mask on before you can help others'."

67. The March 2024 Volunteer Application Form also continued to contain what was set out as *"Driver's Protocol If you are a designated driver: …"*

68. **In May 2024**, the claimant returned to Ukraine to volunteer with the respondent for a further period of two weeks in Eastern Ukriane.

69. Following ACAS conciliation on 13 July 2024 and the issue of the Certificate on 15 July 2024, the claimant's ET1 was presented on 16 July 2024 against the respondent.

70. The claimant's ET1 sets out employment between March 2022 and May 2024, place of work was Ukraine, her role had been that of Volunteer with no payment and as set out at 6.5 of the ET1 (other benefits) the claimant asserted she received accommodation and food with the claimant describing (Further Particulars at E) that she was provided with consideration in the form of accommodation and meals and travel expenses in Ukraine.

Conclusions on witness evidence

71. So far as relevant to the issues before this Tribunal and in relation to matters of fact, the claimant was straightforward in her oral evidence. However, the claimant is mistaken, so far as it was relied upon, at paragraph 10 of the Claimant's Witness Statement, that the respondent handled day-to-day operational decision making at their Scottish headquarters and that there was direct supervision and task allocation from senior staff based in Scotland. Rather, at the relevant time, the respondent's day-to-day operational staff were based in Ukraine and were responsible for directing volunteers on a day-to-day basis, although, so far, as relevant, the broad policy issues, including as set out in the Safeguarding Policy, were set by the respondent in Scotland. While the claimant described that she was in contact with the respondent's people in Scotland, that contact was limited, in particular, where Tom Hughes had authorised a reimbursement expense, it was processed by Ms Elsworthy in Scotland, and where she was directed by Tom Hughes to the Safeguarding Lead in Scotland; where Tom Hughes in Ukraine directed that she should contact the Safeguarding Officer in Scotland she did so and he responded and Mr Henricksen provided access to the 2024 Volunteer Form.

72. While the claimant described that she was in contact with the volunteer co-ordinator, Ms Jo Foxworthy, so far as relevant to the issues, the claimant is mistaken in her recollection, this was a reference to the transcript audio message in which upon the claimant contacting Kevin Fisher (in Ukraine) on 4 January 2024, who described that he (Kevin Fisher) would do the booking referring to a new system. Kevin Fisher indicated that the claimant was required to get hold of Tom Hughes (also operating out of Ukraine), and that if the claimant got hold of Tom Hughes, they (the respondent) would book the claimant through the Volunteer Co-ordinator Jo Fox-Pitt in Scotland.

73. Mr Henriksen was similarly straightforward in his evidence on matters of fact.

74. The dispute, for as long as it was relevant to the issues for this hearing, was principally in relation to characterisation.

Submissions

75. For the sake of brevity, it is not considered necessary to set out the full terms of either the claimant's or respondent's submissions, both of which are detailed; it is, however, considered useful to refer to some elements of the submissions, and those are referred to below.

Relevant Law

76. Although not considered relevant to the issues in the Tribunal, as section 81 of the Equality Act 2010 has been referred to in submissions, its full terms are set out for ease:

> ***81 Ships and hovercraft***
>
> *(1) This Part applies in relation to—*
>
> *(a) work on ships,*
>
> *(b) work on hovercraft, and*
>
> *(c) seafarers,*
>
> *only in such circumstances as are prescribed.*
>
> *(2) For the purposes of this section, it does not matter whether employment arises or work is carried out within or outside the United Kingdom.*
>
> *(3) "Ship" has the same meaning as in the Merchant Shipping Act 1995.*
>
> *(4) "Hovercraft" has the same meaning as in the Hovercraft Act 1968.*
>
> *(5) "Seafarer" means a person employed or engaged in any capacity on board a ship or hovercraft.*
>
> *(6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.*

77. Section **83** (Interpretation and exceptions) of the **Equality Act 2010 (EA 2010),** so far as relevant, provides:

> *(1) This section applies for the purposes of this Part.*

(2) "Employment" means-

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

(b) …"

78. Section **212** of **EA 2010** (General Interpretation) provides, so far as relevant, that in this Act, *""employment" and related expressions are… to be read with section 83".*

79. The Tribunal identified during the hearing that it would also have regard to the EA 2010 Explanatory Notes, which set out

Territorial extent and application

GENERAL

….

15. As far as territorial application is concerned, in relation to Part 5 (work) and following the precedent of the Employment Rights Act 1996, the Act leaves it to tribunals to determine whether the law applies, depending for example on the connection between the employment relationship and Great Britain…

80. **Section 230** of the **Employment Rights Act 1996** (ERA 1996), provides:

s 230 Employees, workers etc.

(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" and "betting 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.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment"—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, an

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly.

81. The respondent circulated a list of what was intimated as relevant authorities in advance of his hearing and referred to most of those cases in both the Skeleton Argument and supplementary oral submission. I have referred to the cases below, placing them under their respective headings (jurisdiction, status following the order set out in the Note) in chronological order and setting out some of the details of those cases.

82. Similarly, for those authorities referred to for the claimant, I have also referenced those below again under the respective heading, placing them within the chronological order for ease.

Territorial Jurisdiction

83. Both parties referenced **Lawson v Serco Ltd**, as it is commonly referred to, which was a unanimous decision of the House of Lords. The full title is **Serco Ltd v Lawson, Botham (FC) v MOD & Crofts v Veta Ltd** [2006] ICR 250 (**Lawson**)

84. In **Lawson,** the common issue in three conjoined appeals was the territorial scope of ERA 1996; it was noted in the opening that s 230 ERA 1996 contains no geographical limitations. It is not considered necessary for the sake of brevity to set out the facts of the 3 cases (they are broadly set out at paragraphs 2, 3 and 4, however paragraph 5 describes that in, the first two appeals Lawson and Botham, employer and employee both had close connections with Great Britain, but all the services were performed abroad. In the third appeal, Crofts, the employer, was foreign, but the employee was resident in Great Britain, and although his services were peripatetic, they were based in Great Britain.

85. At paragraph 37 of **Lawson**, Lord Hoffman sets out:

"First, I think that it would be very unlikely that someone working abroad would be within the scope of section 94(1) unless he was working for an employer based in Great Britain. But that would not be enough. Many companies based in Great Britain also carry on business in other countries and employment in those businesses will not attract British law merely on account of British ownership. The fact that the employee also happens to be British or even that he was recruited in Britain, so that the relationship was "rooted and forged" in this country, ***should not in itself be sufficient to take the case out of the general rule that the place of employment is decisive. Something more is necessary****."* (emphasis added).

86. At paragraphs 38 and 39 of **Lawson**, descriptions of possible scenarios were given, and at paragraph 40, having described situations where unfair dismissal (s94(1) of ERA 1996) may apply, Lord Hoffman describes:

"I have given two examples of cases in which section 94(1) may apply to an expatriate employee: the employee posted abroad to work for a business conducted in Britain and the employee working in a political or social British enclave abroad. I do not say that there may not be others, but I have not been able to think of any and they would have to have equally strong connections with Great Britain and British employment law. For the purposes of these two appeals, the second of these examples is sufficient."

87. Both parties referenced the Supreme Court decision in **Duncombe v Secretary of State for Children Schools and Families (No 2)** [2011] ICR 1312 (**Duncombe**) (some months after his first case – the No1 case failed) held that Mr Duncombe had *"sufficient connection"* with Britain to claim unfair dismissal.

88. As background, Mr K Duncombe and other teachers were employed in what were described as *'European Schools'* operating in EU member states, which were run by an organisation controlled by member states and the European Commission. National governments employed teachers, so the UK Government (the Secretary of State) was the employer of the British teachers working in these schools throughout the EU. It therefore employed Mr Duncombe, who was a British teacher at a European School in Germany.

89. The Supreme Court had previously rejected the teachers' claims under the Fixed-term Employees Regulations (Duncombe (No. 1)). However, in this second decision, the Supreme Court held that Mr Duncombe was entitled to claim unfair dismissal in Britain. Whilst the case was not within any of the examples Lord Hoffman gave in Lawson, where someone working and living overseas may claim in Britain, this was an exceptional case where the employment had such an *overwhelmingly closer connection* with Britain and with British employment law than with any other system of law that it was right to conclude that Parliament must have intended that the employees should enjoy protection from unfair dismissal. This *depended* on a combination of 4 factors:

1. The employer was the UK government, which was the closest connection with Great Britain that any employer can have.

2. The teachers were employed under contracts expressly governed by English law; the terms and conditions were either entirely those of English law or a combination of those of English law and the international institutions for which they worked.

3. They were employed in international enclaves, having no particular connection with the countries in which they happened to be situated, and governed by international agreements between the participating states. They did not pay local taxes. The teachers were there because of commitments undertaken by the British government.

4. It would be anomalous if a teacher who happened to be employed by the British government to work in the European School in England were to enjoy different protection from teachers who happened to be employed to work in the same sort of school in other countries.

90. Both parties also referenced **Ravat v Halliburton Manufacturing Services** 2012 SC 265 (**Ravat**), which was a further decision of the Supreme Court.

91. Halliburton, a subsidiary of a multi-national company, was based in Scotland and supplied personnel to the oil industry. Mr Ismail Ravat had been employed as an accounts manager. He lived in England but worked on a commuter basis in Libya, spending 28 days there followed by 28 days at home. His work in Libya was for the benefit of the multinational's German subsidiary, and Halliburton charged that company for his services.

92. Mr Ravat’s contract terms set out that it preserved the benefits for which he would have been eligible had he not worked abroad (paragraph 5 of the judgment). He challenged a decision to make him redundant while he was working in Libya.

93. Further, as set out in paragraph 8 of **Ravat,** when Mr Ravat started work in Libya, he was concerned to know whether his employment contract would remain governed by UK employment and *“was assured he would have the full*

protection of UK employment law while he worked abroad. He was given a copy of a document in which overseas managers were told to contact the … human resources team in Aberdeen when they were considering action in relation to poor performance, misconduct, dismissal or redundancy." The grievance hearing and appeal took place in Aberdeen.

94. Against that factual background in **Ravat**, an employment tribunal in Scotland accepted that it had jurisdiction to hear Mr Ravat's claim of unfair dismissal (applying 230 (1) ERA 1996). The company challenged the decision, and ultimately it came before the Supreme Court.

95. At para 27 of **Ravat**, the Supreme Court describes whether there was a sufficient connection, the starting point as being *"that the employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open-ended language of section 94(1) leaves room for some exceptions where the connection with Great Britain is sufficiently strong to show that this can be justified. The case of the peripatetic employee who was based in Great Britain is one example. The expatriate employee, all of whose services were performed abroad but who had nevertheless very close connections with Great Britain because of the nature and circumstances of employment, is another."*

96. At para 28 of **Ravat,** the Supreme Court described: *"the circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation. It will always be a question of fact and degree as to whether the connection is sufficiently strong to overcome the general rule that the place of employment is decisive. The case of those who are truly expatriate because they not only work but also live outside Great Britain requires an especially strong connection with Great Britain and British employment law before an exception can be made for them."*

97. Further at para 29 of **Ravat,** it is described that *"The question of fact is whether the connection between the circumstances of the employment and*

Great Britain and with British employment law was sufficiently strong to enable it to be said that it would be appropriate for the employee to have a claim for unfair dismissal in Great Britain."

98. The respondent referenced **Dhunna v Creditsights Ltd** v [2015] ICR 105 [**Dhunna**] was a decision of the Court of Appeal. In this case, Creditsights provided investment research to clients across the world. Mr Satpal Dhunna initially worked for the company in London, dealing with European sales, and he encouraged the company to open an office in Dubai. He moved to Dubai, giving up his European clients, focusing on clients in the Middle East, Asia, and Africa. Mr Dhunna expected to move to a new office in Singapore but was summarily dismissed. He brought a claim in the UK, and the Tribunal accepted it had jurisdiction. Creditsights argued that the Tribunal should have compared the system of employment legislation available in Britain with that available in the jurisdiction where he had been working at the time of his dismissal, namely Dubai, and that the purpose of such an inquiry was to determine which was the better system of law.

99. At para 40 of **Dhunna**, the Court of Appeal set out that *"the general rule is that an employee who is working or based abroad at the time of his dismissal will not be within the territorial jurisdiction of section 94(1), but that exceptionally he may be if he has 'much stronger connections both with Great Britain and with British employment law than with any other system of law.' The relative merits of any competing systems of law have, however, no part in the inquiry to which Lady Hale was referring. Why should they? The object of the exercise is not to decide which system of law is more or less favourable to the employee: it cannot realistically have been Parliament's intention that the 'general rule' in relation to expatriate employees should be regarded as ousted in any case in which the local employment law is less favourable to the employee than British employment law. The object of the exercise is simply to decide whether an employee is able to except himself from the general rule by demonstrating that he has sufficiently strong connections with Great Britain and British employment law."*

100. At paragraph 41 of **Dhunna,** it is further set out that *"The authorities make it clear that the general rule is that someone in Mr Dhunna's position is, upon dismissal, excluded from any right to claim under section 94(1) of the Employment Rights Act 1996. If he wishes to show that, exceptionally, his case is not caught by that general rule, but that he is within the territorial jurisdiction of section 94(1) , he must be able to show that his employment relationship has a sufficiently strong connection with Great Britain and British employment law such that it can be presumed that Parliament must have intended that section 94(1) should apply to him. Proof of such a connection is not established by making a comparison of the relevant merits of British and any competing system of labour law. "*

101. Both parties referenced, **R (on the application of Hottak & Anr v Secretary of State for Foreign and Commonwealth Affairs** [2016] ICR 975 [**Hottack**], in which the Court of Appeal considered whether the High Court was correct in finding that the territorial scope of the Equality Act 2010 did not extend to Afghan interpreters employed by the British government and working with British forces in Afghanistan.

102. As background to **Hottak**, Afghan interpreters locally recruited there by British Armed Forces were held unable to claim in Britain. The Court of Appeal accepted that any employees engaged locally abroad by the UK Government would likely be met with a plea of state immunity if they sought to claim in local courts, such as in Afghan courts. However, said the Court of Appeal (paragraph 55), this was not a factor which, without more, could bring their employment contracts within the exceptional type of case that would enable them to claim unfair dismissal in Britain.

103. The Court of Appeal in **Hottak** expressly reference **Serco** and **Ravat** and at para 47, describes the proposition put in this appeal and its response as follows:

"First, it is said that, because Part 5 of the 2010 Act is directed at outlawing discrimination and so concerns matters viewed by this jurisdiction as going to the very essence of man's humanity to man, Part 5 should be regarded as

having a wider territorial reach than domestic legislation directed merely at outlawing the unfair dismissal of an employee. I would reject that submission. If the proposition goes to the length of suggesting that Parliament must be assumed to have intended its anti-discrimination provisions in Part 5 of the 2010 Act to operate on a world-wide basis, I regard it as wrong. Had that been Parliament's intention, it would have said so. If the proposition amounts to no more than a submission that an overseas employee's complaint of work-related discrimination should and will have an easier territorial passage through the eye of the needle than his complaint of unfair dismissal (a complaint that might also be brought in the same proceedings), it amounts to reading into Parliament's silence on the question of territoriality a subtly nuanced variance of legislative intention as between the two types of case. There is no warrant for that. Parliament's silence has made the application of the law quite difficult enough. The most recent word from the Supreme Court on the topic is that it is a matter of 'fact and degree' as to whether an overseas employment will have a sufficient connection with Great Britain to entitle the employee to the benefit of section 94(1) of the 1996 Act. To impute to Parliament an intention to engraft on to that test an unidentified qualification to the effect that a more generous standard is to be applied when the relevant inquiry is the availability of the discrimination provisions in Part 5 of the 2010 Act is a course I would regard as artificial, unjustified and unwise. I would decline to do it."

104. At paragraph 48 of **Hottak,** the Court of Appeal set out *"I would, therefore, reject the submission that, because these are discrimination claims, the court should look upon the territoriality problems with greater sympathy than if they were unfair dismissal claims."*

Employee Status

105. For the respondent, reference was made to **Mingeley v Pennock & Ivory (trading as Amber Cars)** [2004] ICR 727 (**Mingeley**), a decision of the Court of Appeal, Mingeley appealed against a decision upholding Tribunal findings that the taxi company, to whom he paid a weekly sum for access to its radio and computer system, had not employed him under a *"contract personally to*

do any work or labour" for the purposes of s78(1) of the Race Relations Act 1976 which defined employment as *"Employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour."* Dismissing the appeal, the Court of Appeal notes that an argument on whether Parliament had intended to exclude arrangements such as this from the operation of the 1976 Act; their inclusion could, however, only be achieved by legislation.

106. At paragraph 14 of **Mingeley,** the Court of Appeal set out:

"14. I return to the central issues which Mr Thacker correctly identified in his skeleton argument. In my judgment, on the plain words of section 78 and the authorities to which I have referred, the Employment Tribunal was correct to conclude that, in order to bring himself within section 78 Mr Mingeley had to establish that his contract with Amber Cars placed him under an obligation "personally to execute any work or labour". As the Tribunal found, there was no evidence that he was ever under such an obligation. He was free to work or not to work at his own whim or fancy. His obligation was to pay Amber Cars £75 per week and if he chose to work then to do so within the requirements of the arrangement. However, the absence from the contract of an obligation to work places him beyond the reach of section 78 ."

107. Both parties made reference to **South East Sheffield Citizens Advice Bureau v Grayson** [2004] ICR 1138 (**Grayson**). At the relevant time, the Disability Discrimination Act 1995 did not apply to employers with fewer than 15 employees. The Bureau appealed against a decision of the Tribunal that it had jurisdiction to consider a claim by its employee, Mrs Grayson, who was a Home Visiting and Outreach Development Worker, arguing the Tribunal had wrongly added some of the volunteers and management commitment members to the 11 accepted paid employees. Section 68 (Interpretation) of the DDA 1995 provided so far as relevant that *""employment" means, subject to any prescribed provision, employment under a contract of service or of apprenticeship or a contract personally to do work and related expressions are to be construed accordingly".*

108. At paragraph 12 of **Grayson**, the EAT sets out:

"… But if the proposition is that the volunteer worker is in fact an employee under a contract of service, or under a contract personally to do work, for the purposes of section 68 of the 1995 Act, then in our view it is necessary to be able to identify an arrangement under which, in exchange of valuable consideration, the volunteer is contractually obliged to render services to or else to work personally for the employer."

109. At paragraph 14 of **Grayson**, the EAT commented:

"14. We agree with the tribunal that, in considering the key questions in the present case, it is necessary to focus on the "Volunteer Agreement" and to consider, in particular, whether it imposes any contractual obligations on the volunteers actually to do any work for the Bureau in exchange for consideration. We consider, first, that it is of least some relevance that the Agreement is not required to be signed by either the Bureau or the volunteer, a factor which tends to us to suggest that it was not regarded (at least by the Bureau, which was the author of the document) as constituting a binding legal relationship in the nature of a contract of service or for services between it and the volunteer. We do not, however, regard that feature as by itself conclusive."

110. At paragraph 16 of **Grayson**, the EAT noted the reference in the Agreement, the volunteer's *"usual minimum commitment is for 6 hours including interviewing and writing up case records",* set out:

"We interpret the phrase "usual minimum commitment" as indicating in the context, what the Bureau expects of its volunteers. It is not saying that the volunteers must work those hours, let alone that there is a legal obligation for them to do so, and the tribunal accepted Mrs Whiteley's evidence that no sanction was available against any volunteer who did not honour his commitment. If there is no sanction for not honouring that commitment, that suggests that it is not a commitment in the nature of a legal obligation. The reason, however, that the Agreement identifies what it refers to as the usual minimum commitment is that charities like the Bureau that are materially

dependent on the provision of assistance by volunteers have to organise the provision of their volunteers' services to clients in an orderly way, and it is therefore entirely to be expected that an Agreement such as this will set out guidelines as to the hours it expects its volunteers to put in. This is because the Bureau will want to make the most efficient use of its resources. Similarly, insofar as the Agreement, as it does, makes clear that it expects the volunteer to give as much notice as possible of holiday arrangements, the reason the Bureau wants that information is so that it will be able to organise the rota accordingly. But it is to be noted that the Agreement says nothing about the amount of holiday the volunteer can take. On the face of it, he or she can take as much holiday as and when he or she likes, subject only to the qualification that it is at least expected of him or her that he or she will give the Bureau plenty of warning of it. It appears to us that an agreement under which an alleged employee has this sort of freedom with regard to the taking of holiday is unlikely to be a contract of service or for services. The most striking pointer against it being such a contract is of course that the volunteer is not paid for his services. Whilst he is reasonably expected to put in at least six hours a week, he is not in fact obliged to put in any such hours; he is not paid for such hours as he does put in and the Agreement identifies no minimum number of weeks per year during which he is expected to put in those minimum hours."

111. At paragraph 17 of **Grayson**, the EAT commented

"17. The tribunal was impressed by the fact that the Agreement makes it clear that the Bureau will reimburse volunteers for their expenses incurred in connection with the performance of work for the Bureau. It also found as a fact that this part of the Agreement extends only to true expenses. We regard this feature of the Agreement between the Bureau and its volunteers as entirely unsurprising. It would, in our view, be very surprising if unpaid volunteers were expected to bear their expenses incurred in the course of their work for the Bureau, and we do not regard this feature of the Agreement as providing support for the contention that in truth the Agreement was one of service or for the personal provision of services."

112. At paragraph 19 of **Grayson**, the EAT sets out:

"19. The critical question, in our view, is whether it is possible to extract from the Agreement, read as a whole, a contractual obligation on the part of the volunteer to provide any services at all to the Bureau. The inclusion in the arrangements between the Bureau and the volunteer of an "if" contract of the type we have just identified does not enable this question to be answered in the affirmative, since such a contract imposes no obligation on the volunteer to do anything…"

113. The EAT at paragraph 20 of **Grayson** sets out:

"…we have no difficulty in understanding that, once the volunteer has so ceased, the Bureau will not be liable to indemnify him against future expenses and future negligence liability because there will obviously be none…We do not ourselves regard provision to the volunteer of training as amounting to consideration for a commitment by the volunteer to provide services in exchange. The training is certainly so as to enable the volunteer to do the job, and the Bureau will reasonably expect its trained volunteers to do work for it which will show the provision of training to have been worthwhile. But the training cannot, in our view, be regarded as consideration of what the tribunal appears to have found to be some form of reciprocal undertaking by the volunteer to honour some minimum commitment. The Agreement itself makes no such suggestion, nor can we see how the acquisition by the volunteer of experience in the course of the provision of his services can amount to consideration for what the tribunal appears to have found to be such a reciprocal undertaking. The notion that the acquisition of the experience which the doing of a particular job will give can be regarded as consideration for the performance of the job itself is one which we cannot understand."

114. At paragraph 21 of **Grayson**, the EAT sets out:

"21. We consider that the crucial question which was before the tribunal was not whether any benefits flowed from the Bureau to the volunteer in consideration of any work actually done by the volunteer for the Bureau, but whether the Volunteer Agreement imposed a contractual obligation upon the Bureau to provide work for the volunteer to do and upon the volunteer

personally to do for the Bureau any work so provided, being an obligation such that, were the volunteer to give notice immediately terminating his relationship with the Bureau, the latter would have a remedy for breach of contract against him. We cannot accept that the Volunteer Agreement imposed any such obligation. Like many similar charitable organisations, similarly dependent on the services of volunteers, the Bureau provides training for its volunteers and expects of them in return a commitment to work for it, but the work expected of them is expressed to be voluntary, it is in fact unpaid and all that the Volunteer Agreement purports to do is to set out the Bureau's expectations of its volunteers. In our view, it is open to such a volunteer at any point, either with or without notice, to withdraw his or her services from the Bureau, in which event we consider that the Bureau would have no contractual remedy against him. We find that it follows that the advisers and other volunteers were not employed by the Bureau within the meaning of the definition in section 68 of the 1995 Act."

115. For the claimant, reference is made to the Supreme Court in **Autoclenz v Belcher & Others** [2011] UKSC 41 [**Autoclenz**].

116. As background, claims were brought by 20 car valeters against Autoclenz (which provided car cleaning services to motor auctioneers), the valeters alleged they were ***workers*** under the **National Minimum Wage Regulations 1999** and **Working Time Regulations 1998**. The definition of worker is in materially identical terms in both sets of regulations (and indeed materially the same as s230 ERA 1996) *"… 'worker' … means an individual who has entered into or works 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.".

117. In **Autoclenz,** the valeters were described as sub-contractors and, under the written contracts, were responsible for paying their tax and national insurance and were entitled to provide a substitute to carry out the work. The contracts also stated that the valeters were not obliged to work, and Autoclenz did not undertake to provide work.

118. However, Autoclenz told them how to carry out the work, provided the cleaning materials, determined the rate of pay, prepared their invoices, and required them to give prior notification if they were unable to work.

119. The Tribunal at first instance in **Autoclenz,** on the preliminary issue of whether the claimants were workers, held that the claimants were **workers** within s230 ERA 1996 on the basis that they were **employed under contracts of employment within limb (a) of the definition** and that they were, in any event, **working pursuant to contracts within limb (b).**

120. The Court of Appeal, in **Autoclenz,** had found that the contracts did not reflect what had been agreed between Autoclenz and the car valeters.

121. On appeal, the Supreme Court in **Autoclenz** concluded that that the Court of Appeal had been correct to find that where a such a party disputes the genuineness of an express term, there was no need to show that there had been a common intention to mislead, the essential question was *"what was the true agreement between the parties".*

122. In paragraph 38 of **Autoclenz**, the Supreme Court set out that the four essential contractual terms were that:

> "(1) the valeters would perform the services defined in the contract for Autoclenz within a reasonable time and in a good and workmanlike manner;
>
> **(2) the valeters would be paid for that work;**
>
> (3) the valeters were obliged to carry out the work offered to them and Autoclenz undertook to offer work; and

(4) the valeters must personally do the work and could not provide a substitute."

123. The respondent referenced **Windle v Secretary of State for Justice** [2016] ICR 721(**Windle**), a decision of the Court of Appeal. Dr Windle and Mr Arada had provided services to the Courts and Tribunals Service (HMCTS) on a case-by-case basis as interpreters. They also worked for other institutions. HMCTS was not obligated to offer them work, and they were not obligated to accept it when offered. They were paid for work done, although there was no provision for holiday pay, sick pay, or pension. Dr Windle and Mr Arada considered themselves self-employed and were so treated for tax purposes. In 2012, they brought proceedings against the Ministry of Justice for racial discrimination contrary to the Equality Act 2010, relying on prohibited discrimination against *"employees".* The Court of Appeal restored the Tribunal's decision that individuals providing services to the Courts and Tribunals Service on an assignment-by-assignment basis were not *"employees"* within the meaning of s.83(2)(a) EA 2010 because there was no mutuality of obligation between assignments.

124. At para 23 of **Windle** the Court of Appeal set out *"... I accept of course that the ultimate question must be the nature of the relationship during the period that the work is being done. But it does not follow that the absence of mutuality of obligation outside that period may not influence, or shed light on, the character of the relationship within it. It seems to me a matter of common sense and common experience that the fact that a person supplying services is only doing so on an assignment-by-assignment basis may tend to indicate a degree of independence, or lack of subordination, in the relationship while at work which is incompatible with employee status even in the extended sense. Of course it will not always do so, nor did the ET so suggest. Its relevance will depend on the particular facts of the case; but to exclude consideration of it in limine" (at the outset)"runs counter to the repeated message of the authorities that it is necessary to consider all the circumstances."*

125. The court found that the absence of a mutuality of obligations when work was not being done was capable of shedding light on the character of the relationship between the parties when work was being undertaken. At para 24, it was held that: *'The factors relevant in assessing whether a claimant is employed under a contract of service are not essentially different from those relevant in assessing whether he or she is an employee in the extended sense.'*

126. Both parties referenced **X v Mid Sussex Citizens Advice Bureaux (Equalities and Human Rights Commission intervening)** [2011] ICR 460 (**Mid Sussex CAB**), a decision of the Court of Appeal. For the purposes of the case, it was assumed that X was disabled, although nothing turned on that. She had been accepted to work as a volunteer with the CAB. She had several academic and practical qualifications in law. She was given a volunteer agreement that was said to be binding in honour only and was not a contract of employment. She undertook a 9-month training period and thereafter carried out a wide range of advice work duties. She was asked to cease attending as a volunteer and submitted a claim for disability discrimination on various grounds. The Tribunal rejected her claims on all grounds. She argued that a voluntary post was a stepping-stone to employment and so was an arrangement for the purpose of determining to whom an employer should offer employment within the then-applicable Disability Discrimination Act 1995, in respect of which it was unlawful to discriminate against a disabled person. The first intervener, the Equality and Human Rights Commission, argued that a voluntary post was a form of vocational training and that she had been denied access to it unlawfully. X and the Commission argued that X was in an *"occupation"* within the meaning of what was then a relevant Directive.

127. At paragraphs 15 and 16 of **Mid Sussex CAB**, the Court of Appeal set out

"15. "Employer" and "employees" derive their meaning by reference to the definition of 'employment', which is contained in section 68 of the 1995 Act:

"Employment" means, subject to any prescribed provision, employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions are to be construed accordingly.'

16. Under domestic law, therefore, the persons primarily protected by the 1995 Act are those who have contracts, whether it be a contract of service or a contract for services. In the absence of a contract, the person providing the work or services cannot be in employment at all. That is not to say that all other persons providing work or services are outwith the protection of the 1995 Act if they do not have a contract. Special provision is made for such persons. For example, a certain category of office holders, some of whom will not have contracts, is expressly covered by section 4A, and partners and barristers are caught by sections 6A and 7A respectively. However, it is conceded that the appellant does not have a contract and therefore falls outside the scope of section 4(2)(d), and that she does not fall within any of these special provisions."

128. For the respondent, reference was made to **Jivraj v Hashwani** [2011] ICR 1004 (**Jivraj**), a decision of the Supreme Court. The dispute arose out of an arbitration clause in a joint venture agreement which provided for disputes to be resolved by three arbitrators who *"shall be respected members of the Ismaili community and holders of high office within the community".* The validity of this requirement was challenged on the basis that it was caught by the anti-discrimination provisions contained in the Employment Equality (Religion and Belief) Regulations 2003 (the Regulations). The judge at first instance on the ground that arbitrators were not *"employees"* within the scope of the Regulations (which defined *"employment"* as *"employment under…a contract personally to do any work"*). Following a Court of Appeal decision, the Supreme Court unanimously overruled the Court of Appeal decision, holding that an arbitrator's role is not *"naturally described as one of employment at all" and she/he is in effect a "quasi-judicial adjudicator".*

129. At paragraph 34 of **Jivraj,** the Supreme Court set out *"… The essential questions in each case 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. *Those are broad questions which depend upon the circumstances of the particular case. They depend upon a detailed consideration of the relationship between the parties. As I see it, that is what Baroness Hale meant when she said that the essential difference is between the employed and the self-employed. The answer will depend upon an analysis of the substance of the matter having regard to all the circumstances of the case."*

130. In paragraph 36 of **Jivraj**, having reviewed earlier decisions on employment relationships, the Supreme Court set out that *"employment"* ***must be employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.*** (My emphasis). Given the importance of the EC perspective in construing the legislation, including the Regulations, the cases must now be read in the light of those decisions. They show that it is not sufficient to ask simply whether the contract was a contract personally to do work. They also show that dominant purpose is not the test, or at any rate not the sole test.

131. **Mid Sussex CAB** was subsequently upheld by the Supreme Court at [2013] ICR 249, which concluded that an unpaid volunteer working at a CAB was not an employee, nor was the complainant a worker or someone pursuing an occupation for the purposes of the Framework Directive 2007/78/EC.

132. For the respondent, reference was made **to Halawi v WDFG UK Ltd (t/a World Duty Free)** [2015] 3 All ER 543 (**Halawi**), a decision of the Court of Appeal. Mrs Halawi worked as a beauty consultant in an airport's duty-free outlet managed by WDF, which was beyond the security gates and was thus "airside". She provided her services to a cosmetic company [Caroline South Associates(C)] through a limited company [Nohad Ltd(N)], which she had set up. She had to seek WDF's permission to take a holiday, and WDF had the power to issue a warning if she was late for work. However, she had no entitlement to sick pay or holiday pay, and had no contract of employment with WDF, N or C.

133. WDF withdrew her security clearance, which meant she could not work in the duty-free outlet. She claimed that WDF had dismissed her and discriminated against her on the grounds of race and religion.

134. In order to bring such a claim she had to show that she was WDF's employee for the purposes of s.83(2) EA 2010, the Tribunal and the EAT concluded that she was not WDF's employee because she did not have to perform the duties personally but could send a substitute although required to choose someone with store approval and had an airside pass; none of the parties were obliged to provide her with any work; and WDF did not have control over her.

135. At paragraphs 23 to 25 of **Halawi,** the Court of Appeal addressed the position:

"23. Part 5 of the EA 2010 contains various prohibitions making it unlawful to discriminate against employees and others. Section 83 contains definitions which apply for the purpose of Part 5. These include a definition of "employment". It provides so far as material:

"(2) "Employment" means—

"(b) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;...

24. It is the third type of category of employment within section 83(2) that is relevant in this case, that is employment under "a contract personally to do work."

25. We have not been taken to any case on service companies but there are some recent authorities which throw light on the meaning of section 83(2). In Jivraj v Hashwani [2011] 1 WLR 1872, the Supreme Court considered whether arbitrators appointed pursuant to a contract were within the third category. The Supreme Court examined section 83 in detail. It concluded that there had to be more than simply the personal performance of work. There had also to be a contract under which that work was provided. Lord Clarke, with whom the other members of the Supreme Court agreed, held:

"As I read Percy, it sought to apply the principles identified by the Court of Justice, as indeed did this court in O'Brien [2010] 4 All ER 62. The essential questions in each case are therefore those identified in paragraphs 67 and 68 of Allonby [2004] IRLR 224, namely 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. Those are broad questions which depend upon the circumstances of the particular case. They depend upon a detailed consideration of the relationship between the parties. As I see it, that is what Baroness Hale meant when she said that the essential difference is between the employed and the self-employed. The answer will depend upon an analysis of the substance of the matter having regard to all the circumstances of the case. …" (at [34])

136. For the respondent, reference was made to **Unite the Union v Nailard** [2017] ICR 121 [**Nailard**], in which the EAT considering s82(3) (a) of EA 2010 held that a union member elected to office under its rules was not thereby making an agreement to work personally for the purposes of s83 (2) EA 2010. Holding that the person was voluntarily undertaking the duties of the office, there was no commitment to any particular amount of work and no right conferred by the rule at all to remuneration. While the decision was appealed, the appeal was dismissed, as was the cross-appeal.

137. The EAT in **Nailard,** having noted that for *"the purposes of section 83(1) a contract will only be relevant if it is a contract "personally to do any work""* set out at paragraphs 34 and 35:

"34. We do not think it is possible to spell out of the rule book any contract personally to do any work. The rule book lays down certain minimum responsibilities for the branch secretary and treasurer; it does not require them to undertake the work personally, though they will be answerable for ensuring the work is properly done. The rule book

provides that the chair will preside over all meetings of the branch, but it makes provision for a substitute if he is absent. Even if the responsibilities of office can be described as entailing an obligation to work personally, which we doubt, the rule book makes no provision for any payment of any kind. The rule book was therefore, with respect to the ET, not the source of any agreement to work personally in the sense explained in Allonby and Hashwani.

35. In our judgment it is plain that a union member who is elected to office under a provision similar to rule 17 is not thereby making an agreement to work personally for the purposes of section 83(2), nor is the union making such an agreement with the member. The member is voluntarily undertaking the duties of office; there is no commitment to any particular amount of work and no right conferred by the rules at all to remuneration."

138. For the claimant, reference was made to **Groom v Maritime Coastguard Agency** [2024] EAT 71 [**Groom**]. In **Groom**, the claimant was a volunteer for the Coastal Rescue Service (through which the Maritime Coastguard Agency, the respondent in that case, discharged some of its functions). The relationship was governed by a Handbook, which described the relationship as entirely voluntary. There was also a Code of Conduct which volunteers were required to follow. Amongst other things, this required attendance at specific training and maintaining a reasonable level of incident attendance. The Code of Conduct also said that volunteers could submit monthly payment claims for attending certain activities.

139. By letter, Mr Groom was invited to a disciplinary hearing, after which his Coastal Rescue Service membership was terminated. Mr Groom argued that he should have been given the right to be accompanied to the disciplinary hearing.

140. Mr **Groom's** claim before the Tribunal was for refusal to permit the claimant to be accompanied by a trade union representative at the disciplinary hearing, contrary to ss. 10 and 11 Employment Rights Act 1999 [ERA 1999]. Section

13(1) ERA 1999 (Interpretation) provides in those sections, "worker" means (so far as relevant here) an individual who is (a) a worker within the meaning of **s230(3) of ERA 1996.** Thus, s. 230 (3) ERA 1996 was the relevant provision.

141. At paragraph **93** of **Groom**, on the facts of that case, the EAT notes*, "Although the Tribunal was correct in saying that there are a number of activities for which remuneration was not payable at all, on the face of the documents, those activities appear to be limited. Categories A to G (in respect which there is an entitlement to remuneration) are wide ranging. The only examples of activities which do not attract remuneration which are given are " attendance at practice events " and "unauthorised attendance at public relations events". Although that list is non-exhaustive, it suggests that non-remunerated activities are marginal.*

Sums payable in respect of attendance are properly characterised as remuneration."

142. Further, at paragraph **94** of **Groom,** the EAT explicitly stated that it rejected *"the Respondent's argument that the sum payable for attendance was not in the nature of an entitlement to an hourly rate of remuneration, but rather is analogous to the recovery of expenses. … The calculation of the sums payable is by reference to hours spent multiplied by an hourly rate. The Handbook describes the payment as " compensation for any disruption to your personal life and employment. "* ***A payment in compensation for interference in a person's use of their time is the essence of remuneration.*** *It is plain that the payments in this case were correctly described by the parties as remuneration."*

143. And in paragraph **96** of **Groom,** the EAT described, on the facts, "The distinction drawn between the time of provision of services and the later obligation to pay is wholly artificial. The remuneration is paid in respect of the activity attended – i.e. in respect of the service provided. When a "[Coastal Rescue Officer such as the claimant] *"attends an activity, they do so in the*

knowledge that the remuneration provisions apply, and, if it is a relevant activity, they will be entitled to remuneration."

144. Reference was made in **Groom** to the Employment Appeal Tribunal's decisions in **Grayson**, in which the EAT rejected the argument that an obligation to reimburse expenses amounted to remuneration.

145. The EAT set out that the Tribunal in **Groom** had erred in its analysis of the respondent's obligation in fact to remunerate the claimant. The documents in Groom created a right to remuneration with respect to some (though not all) activities, and it was irrelevant that he had to submit a claim for payment and that many volunteers in practice did not do so. The Tribunal also erred in its analysis of the requirement of mutuality of obligation in relation to attendance at an individual activity. Overall, the Tribunal erred in the construction of the documents: on proper construction, there plainly was a contract that came into existence when the claimant provided services at an activity for which there had been a promise of remuneration.

146. The EAT in **Groom** found that a contract came into existence when Mr Groom attended an activity that afforded him the right to remuneration. Despite the word *'volunteer'* being used throughout the relevant documents, this did not determine legal status. Mr. Groom was therefore found to be a *'limb (b) worker'* in the **Uber v Aslam and Ors** case, in certain circumstances. For the purposes of establishing worker status, where s. 230 ERA 1996 is relied upon; a contract came into existence when a volunteer attended an activity in respect of which there was a right to remuneration.

Discussion

General observations

147. For the claimant at **Part I** of the claimant's **Final Written Submissions** [at **Introduction**, it is described that this Preliminary Hearing was to determine

- Whether the claimant was a "worker" or "employee" within the meaning of the Employment Rights Act 1996 and/or Equality Act 2010.

- …
- Whether the claims fall within the material scope of the Equality Act and ERA 1996, notwithstanding the overseas context.

Further, at para 2, it is set out that the claimant contends that she qualifies as a worker and/or employee under s 230 ERA 1996 and section 83(2) EA 2010.

148. That description does not reflect the November 2024 Order and Note identifying this hearing to be held remotely to address (i) territorial jurisdiction, (ii) employee status, and (iii) any opposed application to amend, in respect that it presupposes that the Tribunal accepted that notice of claims under ERA 1996 and EA 2010 had been given. Only notice of claims under EA2010 were identified, and there had been no amendment, as above.

149. At Part I paragraph 3 of the claimant's Final Written Submission, the claimant acknowledges that *"at present, no formal application to amendment has been made, it is inaccurate to suggest that only EA 2010 claims are relevant".* The claimant refers to the November 2024 Order and Note paragraphs 6, 16 and 202-24 wherein it argued that that the claimant has indicated her intention to amend *"potentially to include whistleblowing or Victimisation"* and argues that the scope of this hearing must be *"understood as foundational"* and *"to proceed otherwise would be to risk the inefficient use of Tribunal and Party resources".*

150. It is observed that, as acknowledged by the claimant, no amendment was presented, despite the November 2024 Order and Note and thus the third issue, which was set out for the Tribunal to address (iii) any opposed application to amend, does not arise.

151. Paragraph 45 of the ET3 explicitly sets out the EAT comments in **Chandhok.** In short, the issue is the claims made, not claims (or indeed allegations) that *might* have been made.

152. No amendment was intimated seeking to give notice of a claim in terms of s.230 of ERA 1996, nor of any asserted (in submission) allegation that the claimant had been disciplined.

153. In terms of s230 ERA 1996, a worker is defined to include those who undertake to *"do or perform personally any work or services for another party 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."*

154. Section s230 ERA 1996 provides materially identical definitions of employee and worker, as also seen in the National Minimum Wage Regulations 1999 and Working Time Regulations 1998.

155. However, s82 (3) EA 2010 and s230 ERA 1996 are expressed differently. It cannot be concluded that decisions considering the application of the wording of s.230 ERA 1996 have application to s. 82 (3) EA 2010.

156. While reference has been made to s81 EA 2010 at para 24 of the claimant's Final Written Submissions, it does not apply to the issues.

157. The Tribunal is conscious that it has been identified that the claimant and her representative are not familiar with Tribunal procedure and in accordance with Rule 41 of the 2024 Employment Rules of Procedures, while no reference is made is the submissions notes that at paragraph 2 K of the claimant's September 2024 Further Particulars, it was intimated that the claimant has no reasonably practicable available forum other the Tribunal to advance her claim, there however no evidence before the Tribunal beyond that of Mr Henrickson, as set above that he did not know what was required under Ukraine law for employees.

Discussion

(i) Territorial Jurisdiction

158. Within the **Claimant's Final Written Submissions at Part VII Response to Respondent's Skeletal Argument at paragraph 8,** it is initially set out uncontroversially that the Respondent is a Scottish charitable organisation. Further, it is set out that it is overseen by the Office of the Scottish Charity Regulator. Equally, it would be uncontroversial to say that while operating in the UK it is governed by the law within the UK (for current purposes that is Great Britian). Beyond those statements, the issues are for this Tribunal.

159. At **Part II Statement of Facts within** the claimant's Final Written Submission **paragraph 8,** while it is uncontroversial that she was *expected* to follow a schedule, UK-based Trustees did not *determine it*. Indeed, for the claimant, it is simply proposed that the daily routine *aligned* with the *expectations* set out in the respondent's 2023 Safeguarding Policy.

160. The evidence, including that of the claimant, is that she was operationally managed by team leaders in Ukraine. That is consistent with the description at **Annex 4** of the respondent's 2023 Safeguarding Policy, in particular **Rest Days in Theatre** which describes that the local (to Ukraine) team were responsible for managing the day-to-day programme, while it also sets out that the Trustees had directed that there should be at least one rest day that does not alter the place of management.

161. The first sentence of **paragraph 15 Part IV** of the claimant's Final Written Submission at **Part IV, paragraph 15**, is the Tribunal concludes simply a reference to the **4 January 2024** message from Kevin Fisher, which does not identify any material control or direction from anyone beyond Ukraine. The second sentence is factually inaccurate; it was the claimant's practice to make contact directly in Ukraine and make arrangements directly in Ukraine, not through the UK, for volunteering, including arrival and departure.

162. The claimant operated (volunteered) at all times in Ukraine, and it was understood by the claimant that she was managed by the Ukraine-based Operational Leader, principally Mr Hughes (failing which Mr Fisher) in Ukraine. This is indeed consistent with the claimant's decision to initially contact Mr Hughes in Ukraine in relation to her allegation against Mr Fisher. It was Mr Hughes who directed the claimant to report to the Safeguarding Officer in Great Britian.

163. At **Part II, in Paragraph 9** of the claimant's Final Written Submissions, the claimant argues (in the context of Territorial Jurisdiction) that:

    a. It was standard practice that **travel coordination went through** Jo Fox-Pitt (who is based in UK); *however,* this standard practice is not accurate so far as it applies to the claimant. Beyond the general

position that the claimant made her own arrangements with contact in Ukraine, this is a reference to the 4 January 2024 Kevin Fisher audio message (whom she contacted directly) which essentially directs the claimant to contact Tom Hughes, the Operational Leader in Ukraine. It does not describe where *"records"* are, nor who *"they"* were that *"gotta keep track of where everyone is."* This position is essentially repeated at paragraph 10 of the Claimant's Written Submissions.

b. Safeguarding concerns were ***"escalated"*** to Nigel Harling in the UK. That is, there was an escalation process to Great Britain, is accurate.

c. Financial reimbursements *"were **ultimately** processed by Liz Elsworthy once approved on the ground".* This reflected the process in which the Ukraine-based team leader approved volunteer requests for financial reimbursements and then processed where the respondent was based.

164. The claimant's temporal (or actual) connection to the respondent in Great Britain is limited, in substance, to four processes.

1. When she incurred expenses and they were approved in Ukraine by the Operational Leader, the process would be followed by reimbursement being processed for the respondents by Ms Elsworthy in the UK.

2. While operationally directed in Ukraine on a day-to-day basis by the respondent Operations Leaders (principally Thomas Hughes, failing which Kevin Fisher), in Ukraine, limited aspects such as having a Mandatory Rest Day were formulated in the UK for application by the Ukraine Operational Leaders on the ground, as seen in the 2023 Safeguarding Policy the existence of which had been mentioned in 2023 although the claimant had not seen that document prior to these proceedings.

3. Having raised what was a serious complaint in Ukraine, the Operational Leader in Ukraine, Tom Hughes in March 2024, advised

her (consistent with the **2023 Safeguarding Policy**, which the claimant had not seen) that she report the matter to the respondent's Safeguarding Officer, Nigel Harling, in the UK. The respondent, the UK-based Safeguarding Officer, responded to the claimant.

4. In March 2024, it having been identified that the claimant had not completed any of the earlier iterations, Mr Troels Henricksen who is based in UK, provided the claimant with access to the **March 2024 Volunteer Application Form** (which by that time was a Google online form) and directed the claimant to complete the same.

165. As set out in **Lawson,** it is unlikely that someone working abroad would be within the scope of employment law unless working for an employer based in the UK; however, that would not of itself be enough. Those temporal matters do not individually or cumulatively, in all the circumstance where the claimant volunteering was managed on a day-to-day basis in Ukraine amount to what in **Ravat** is described as an especially strong connection with Great Britain and British employment law for an exception to be made.

166. Insofar as the claimant, in relation to Territorial Jurisdiction, seeks to rely upon wording within the **2023 Safeguarding Policy** (which document the claimant had not seen) under the **Annexe 1, header Indicators of Possible Abuse,** specifically the language set out at the sub-header **Discriminatory.**

167. The characterisation, that *"Discrimination is abuse that relates to difference or perceived difference, **particularly** with respect to race, gender, disability, **or any of the protected characteristics of the UK Equality Act",*** properly read is a generalised description of "discrimination" applied to various groups, three of which are listed and expanding to those protected groups as defined within the EA 2010. The Tribunal concludes that the subsequent statement that "these requirements still apply to us while working in Ukraine" is aspirational. The relevant passage does not propose that all staff and volunteers in Ukraine are subject to the UK's Equality Act 2010. This approach is consistent with the Court of Appeal in **Hottak** paragraph 47 above.

168. In any event, as a document which the claimant did not have at any relevant time, the Tribunal does not accept that the wording can be relied upon. It was essentially a logistical document for Operational Leaders and others who had it in a warzone; it did not express itself in the language of contracts of obligation. Reliance on this provision with the **2023 Safeguarding Policy** which the claimant had not seen at any relevant time is very different from the factual position in **Ravat** where the individual lived in UK but worked in Libya on a rotational basis and **Ravat** had been assured that he would continue to have the full protection of the UK law while working abroad.

169. The claimant did not have sufficiently strong connections with the UK and its employment law to except herself from the general rule as set out in **Dhunna,** that UK employment law would not apply, as the claimant did not work in the UK.

170. While it is described in the claimant's **Further Particulars [paragraph 2 (l)]** that the claimant has no (other) reasonably practical available forum, there is no evidence before the Tribunal on same, more significantly, that, of itself, was not sufficient in **Hottak.** In **Hottak** the Court of Appeal held that while claimants were held unable to claim in the place they were operating (due to the likelihood of a plea of state immunity), that was not a factor which, without more, could bring what were employment contracts within the exceptional type of case that would enable them to bring claims in Britian. It does not bring the arrangement within the exceptional type of case that would enable the claimant to bring a claim in Great Britain. As set out above, there is not more.

171. This analysis of territorial jurisdiction addresses the question of whether the Tribunal has jurisdiction. However, in all the circumstances, it is considered appropriate to consider Employee Status.

Discussion

(ii) Employee Status

172. While **Mingeley** considered a predecessor to EA 2010, the language deployed in s78(1) of the former RRA 1976 so far as relevant materially

unchanged in s83(2) EA 2010. That is also the position for **Grayson,** in that s83(2) EA 2010 is again materially unchanged from that seen in s68 of DDA.

173. The correct approach as, set out in **Autoclenz,** which was considering a differently expressed statutory provision in a case, where it was expressly set out that the respondent determined rates of pay (in the current case there was no rate of pay) is not to focus on labels or documentation alone but to assess the true agreement between the parties. The respondent here provided a voluntary position (as an unpaid volunteer), which the claimant elected to take up. It was not an employment relationship.

174. As the Court of Appeal described in **Windle,** above, the question of whether a claimant is an employee within **s. 83** (2)(a) EA 2010 is answered by having regard to all the circumstances.

175. The following references to the claimant's **Final Written Submissions** are, broadly, to **Part II** thereof unless otherwise identified.

176. For the claimant, at **paragraph 3**, it is set out uncontroversially that the claimant first began volunteering with the respondent in March 2022 and over a period of two years returned to participate approximately three times a year.

177. At **paragraph 4**, the claimant's activities (described as responsibilities although more accurately framed as expectations) are set out over eight separate bullet points, including (attending) daily briefings in the morning and evening (such briefings were described in the respondent's 2023 Safeguarding Policy), which the claimant participated in. There was evidence of the claimant driving one of the respondent's vehicles on an occasion. The claimant drove volunteers and agreed on **28 August 2023** to drive Kevin Fisher.

178. The remaining activities, such as preparing and serving food, especially pizzas (which would include assisting in clearing up sites), translating, and painting, are broadly uncontroversial.

179. At **paragraphs 6, 14** (in the second sentence) and **19** (at conclusion of the third sentence), it sets out that the claimant was *"reprimanded"* - subject to *"managerial reprimand"* (in para 19) in response to requesting a day off.

180. That was not a matter previously foreshadowed in the written case of such an allegation relied upon (reference is made to **Chandhok** above). There was no fair notice of this allegation.

181. In response to a request for clarification on where that arose in evidence, the Tribunal was referred to the document within **No. 11** of the Bundle listed as **11. WhatsApp Message between the Claimant and Thomas Hughes from 30th March 2022 to 12th July 2024 (page 58).** Although listed as page 58, it covers pages 58 to 73 in the bundle.

182. In particular and at **page 64** of the Bundle of what is indicated to be a WhatsApp Exchange (slightly above half way down the page), between the claimant and Tom Hughes (identified as Tom Poland) on **10 January 2024** (day and month being transposed) at 3.09 pm which bears to set out a response from Tom Hughes in response to the claimant asserting that she was exhausted and a response.

183. That extract had not been spoken to. The Tribunal concludes, however, that this *occasion* had been spoken to by the claimant when she described in her evidence that she had wanted a day off. Kevin Fisher agreed to this, and Tom Hughes messaged her, saying she was needed.

184. There was no written pleading giving fair notice that any form of reprimand was relied upon. While the extract was not spoken to in evidence, the claimant described in her oral evidence that she had wanted a day off, Kevin Fisher had agreed to it, and Tom Hughes messaged her saying she was needed. It was NOT referred to the claimant's statement for this hearing. The occasion was NOT described as a reprimand in evidence. It is the Tribunal's conclusion that the sequence spoken to by the claimant amounted to an expression of disappointment at someone not meeting an expectation and was not in any sense a reprimand. To the extent that that document and extract could have been spoken to, a natural reading would be the expression of disappointment

at someone not meeting an expectation. It does **not** support the description in the Written Submission of a reprimand in any disciplinary sense. The Tribunal places no weight on the asserted allegation in the Written Submission of a reprimand.

185. It is uncontroversial, that as set out Mr Henriksen, as it was put to him, confirmed that the claimant was *"expected to comply with the organisation's driver protocol"* as set out in the March 2024 Volunteer Agreement and as it replicated the September 2023 Volunteer Agreement, although that earlier version had not been provided to the claimant at all times during her period of volunteering.

186. Further, at **paragraph 7,** it is argued that the claimant was *"tasked with driving her team leader to and from hospital each day".*

187. This was not previously foreshadowed in the written case of their being such an allegation relied upon (reference is made to **Chandhok** above). While the claimant in her statement (under the subheading Integration) describes that she *"drove vehicles",* there had been no fair notice of this asserted daily task.

188. In response to a request for clarification where that arose in evidence, the Tribunal was referred to: WhatsApp Exchange at the foot of **page 89** of the bundle between the claimant and Kevin Fisher (identified as Kevin ST) on 28 August 2023, which had not been spoken to in evidence. However, the same WhatsApp extract appears on **page 367** of the bundle, which page was referred to in the claimant's evidence in the Tribunal. That extract between the claimant and Kevin Fisher (identified as Kevin ST in the extract) on **28 August 2023** (day and month being transposed) sets out a request from Mr Fisher to take him without identifying the destination or reason, indicating he would explain the reason.

189. To the extent that the claimant relies upon the extract, it does not directly support this subsequently asserted description of the daily task referred to in the submission; there was no written pleading giving fair notice that such a daily task was relied upon. That was not a matter that the claimant spoke about directly. The above extract does not support the asserted description of

their being such a daily task relied upon. The carrying out of a task on a daily basis is not at odds with the claimant being a volunteer. The Tribunal places no weight on the asserted daily task.

190. It is noted that paragraph 7 states that the claimant drove one of the respondent's vehicles (**Mavis**).

191. On seeking clarity on where that evidence was, the Tribunal was directed to page 370 of the bundle. Page 370 is formed into a grid with rows. While extract at the **first row** on page 370 was the subject of evidence, the **fourth row** of **page 370** of the Bundle which bears to be a short text extract of four WhatsApp exchanges on **26 May 2024** (day and month being transposed) between the claimant between the Tom Hughes (Described as Tom Poland) and the claimant, had not been spoken to in evidence by the claimant, and was not the subject of cross.

192. To the extent that the document and extract could have been spoken to, a natural reading would be of a short exchange referencing the use of a respondent vehicle (which has been referred to in evidence as Mavis) on an occasion and bears to conclude with the claimant asking if she was needed to drive that day with Tom Hughes responding that she was not.

193. Mr Henricksen accepted that the claimant had driven vehicles for the respondent.

194. Neither of the above supports the asserted description of the respondent, relying *heavily* on the claimant for its transportation needs, nor the claimant frequently using her own rented vehicle to transport volunteers; there was no written pleading giving fair notice that such a daily task was relied upon. The above extract does not support the asserted description of their being such a daily task relied upon. In any event, tasks without remuneration are not at odds with the claimant being an unpaid volunteer, as seen in **Grayson.**

195. It is uncontroversial, that as set out Mr Henriksen, as it was put to him in the context of the claimant driving vehicles, confirmed that the claimant was *"expected to comply with the organisation's driver protocol"* as set out in the

March 2024 Volunteer Agreement and as it replicated the September 2023 Volunteer Agreement, although that earlier version had not been provided to the claimant at all times during her period of volunteering. Beyond that, the broader characterisation set out in paragraph 7 is inaccurate.

196. As set out in **paragraph 8,** the claimant's work (as a volunteer) followed what is proposed as a structured daily routine aligned with the respondent's **2023 Safeguarding Policy** at **Annex 4**. As set out, the Trustees in the Safeguarding Policy at Annexe 4 were *"keen that [briefings] should form part of a regular daily routine" and that "volunteers should have designated rest days…"*

197. This reflected the respondent's operational expectations of volunteers, both in the context of a war zone and the respondent's responsibility as holders of the charitable donations and did not amount to requirements.

198. **Paragraph 11** describes the process by which the respondent supported unpaid volunteers with accommodation and food. The claimant, however, did not receive any remuneration. The lack of paid remuneration is not consistent with an individual falling within s83(2) (a) EA 2010, ref **Jivraj** and **Nailard** above.

199. In **Grayson,** the EAT described that it would be surprising if organisations left unpaid volunteers out of pocket. While there was a form of contract in **Grayson,** it was a unilateral contract to pay back expenses and insure volunteers against negligence claims. It was not a contract for work; it did not state that the volunteer must provide or carry out work. It was an *"if"* contact, the *"if"* being *"if you do any work for the bureau and incur any expenses in doing so, and /or suffer a claim from a client you advise, the bureaux will indemnify you against your expenses and any such claim"* and there was an expressed *"usual minimum commitment"* of six hours. Those facts were insufficient to establish an employment contract.

200. As set out in **Grayson,** it would be very surprising if unpaid volunteers, such as the claimant, were expected to bear the expenses incurred in the course of volunteering. The Tribunal does not regard a facility where the respondent

may reimburse expenses, provided accommodation and or food (including in the context of operations in a war zone) to establish that the claimant was employed under a contract of employment, nor that there was contract personally to do work.

201. **Paragraph 13** describes, in essence, that as with any volunteer in such a charity, the role of the volunteer is central to the delivery of humanitarian aid. That is essentially a neutral statement.

202. **Paragraph 14** proposes, in the first sentence, that the claimant's duties *"were not sporadic or optional"*. That is inaccurate. She was a volunteer, and the responsibilities were precisely *"optional."* There was no disciplinary sanction. The proposition that they were not *sporadic*, on the occasions when the claimant elected to volunteer, is not a matter of import.

203. In relation to **paragraph 16,** the factual matrix in **Groom** is not on all fours with this claim; there is no remuneration right at all here. In **Grayson,** the EAT rejected the argument that an obligation to reimburse expenses amounted to remuneration. In any event, the issue in **Groom** was whether the claimant was a worker in terms of s. 230 ERA 1996, which is not an issue here.

204. **Paragraph 17** proposes in the context of reference to **Autoclenz** that *"she was personally **required**"* to perform the respondent's core mission. However, on the facts, the claimant *was not personally **required*** to do anything. The claimant elected to volunteer. The correct approach as, set out in **Autoclenz,** which was considering a differently expressed statutory provision in a case, where it was expressly set out that the respondent determined rates of pay (in the current case it is agreed that there was no rate of pay) is not to focus on labels or documentation alone but to assess the true agreement between the parties. The true agreement here was that the respondent here provided a voluntary position (as an unpaid volunteer), which the claimant elected to take up. It was not a contract of employment, nor was there was no contract personally to do work.

205. **Paragraphs 18** and **19** proposes that the claimant's working arrangements bore strong similarities to a zero -hours contract; it, however, continues that

*"she was not compelled to undertake a mission and the Respondent was not obliged to offer one… she was **expected** to perform her duties in full accordance with team expectations and internal policy".* The Tribunal does not agree that there was a contract of employment, expectations as seen in Grayson are not, in the circumstances, sufficient.

206. Insofar as the claimant, in relation to **Status**, seeks to rely upon the **2023 Safeguarding Policy** (which document the claimant had not seen), it is expressed as expectations and not contractual obligations; the occurrence of volunteering does not transform it into a contractual document.

207. The claimant was never paid. That was not an oversight but an essential part of the volunteer agreement. The 2024 Volunteer Agreement nor any arrangement between the parties gave the right to any remuneration. As set out in **Grayson** above, reimbursement of out-of-pocket expenses is unsurprising and does not amount to pay for work. That equally applies to the provision of accommodation and meals, neither of which amounted to payment for work in these circumstances. There was no payment for work done, nor was there any anticipation of payment.

208. There was no contractual obligation to do work. There was no contractual remedy or disciplinary sanction in the event that the claimant declined to perform work. That an organisation may reasonably anticipate that a volunteer will comply with the rules or expectations if an individual chooses to volunteer does not create a contractual obligation. The respondent had no contractual remedy against the claimant if she declined to perform any aspect of volunteering. There was no requirement that the claimant give any period of notice to the respondent before ceasing to volunteer.

209. Having regard to all the circumstances, the claimant was not an employee within s. 83 (2)(a) EA 2010. The claimant was not employed under a contract of employment, and there was no contract personally to do work (it is not argued that there was a contract of apprenticeship).

Decision

(i) Territorial Jurisdiction

210. The judgment of the Tribunal is that the claimant's claims do not fall within the territorial scope of the Equality Act 2010 and are thus not within the jurisdiction of the Employment Tribunal.

Decision

(ii) Status.

211. The judgment of the Tribunal is that the claimant was not an employee of the respondent within the meaning of section 83 of the Equality Act.

Date sent to parties **04 May 2025**