



EMPLOYMENT TRIBUNALS

Claimant: Chris Woolcock
Respondent: Citysprint (UK) Ltd

FINAL HEARING

Heard at: Midlands West Employment Tribunal
On: 1st, 2nd, 3rd, 4th & 5th July 2025 (In person)
7th & 8th July (Judge alone Deliberations)
1st August 2025 (Oral Judgment in person)
Before: Employment Judge Gidney (sitting alone)

Appearances

For the Claimant: Mr Chris Woolcock (in person)
For the Respondent: Ms Lucy Bone (Counsel)

JUDGMENT

It is the Judgment of the Tribunal that:

- 1. At all material times the Claimant was engaged as a self employed contractor.**

2. **The Claimant's claims of direct race discrimination (s13 Equality Act), harassment related to race (s26 EqA), victimisation (s27 EqA), Holiday Pay and Unauthorised Deductions are dismissed due to a lack of jurisdiction.**

REASONS

Introduction

1. The Claimant commenced his engagement with the Respondent offering delivery driver services from 28th October 2021 until that engagement ended on 13th October 2022. The Claimant is Black British. His Claim Form asserted that he suffered from the mental impairment of Dyslexia. He delivered letters and parcels on behalf of the Respondent throughout the UK.
2. On 22nd December 2022 the Claimant notified ACAS of a dispute with the Respondent. He received his Early Conciliation Certificate on 13th January 2023 [1]¹. By a Claim Form dated 14th January 2023 [2] the Claimant presented the following claims [14]:
 - 2.1. Direct Race discrimination (s13 EqA);
 - 2.2. Harassment Related to Race (s26 EqA);
 - 2.3. Victimisation (s27 **EqA**);
 - 2.4. Direct Disability Discrimination (s13 EqA);
 - 2.5. Holiday Pay;
 - 2.6. Unlawful deductions from pay (s13 ERA).
3. The Respondent submitted an ET3 Response Form dated 14th February 2023 [19] which denied all of the Claimant's claims. It asserted [26] that '*by his own admission, the claimant was engaged as a self-employed contractor.*

¹ Numbers refer to page numbers within the agreed Preliminary Hearing bundle.

Consequently, the Employment Tribunal does not have jurisdiction to hear any of the claims alleged by the claimant'.

4. The matter was case managed by Employment Judge Kelly on 20th November 2023 [66]. The Judge listed a preliminary hearing to determine whether the Tribunal lacked the statutory jurisdiction to determine his claims on the grounds that he was a self-employed contractor. In the event that the Tribunal had jurisdiction, it would go on to determine an amendment application presented by the Claimant.
5. On 5th-6th November 2024 Employment Judge Dean determined that the Claimant was not disabled by either dyslexia or neck/back issues. Accordingly the Claimant's disability discrimination claims were dismissed.
6. The matter was case managed again by Employment Judge Platt on 11th February 2025 [83]. Various developments occurred since the Case Management Order of Judge Kelly. It is not necessary to recite those developments, save for noting that on 11th February 2025 Judge Platt:
 - 6.1. Converted the hearing listed for 5 days on 30th June until 4th July 2025 from a final hearing to a preliminary hearing;
 - 6.2. The Employment Status issues were identified and recorded by Employment Judge Platt [90]. Accordingly a preliminary hearing was listed to determine whether [83-84]:
 - 6.2.1. the Claimant was an employee within the meaning of s83 **Equality Act 2010**, namely that he was engaged under a contract personally to do work for the Respondent;
 - 6.2.2. whether he was a 'worker' as defined by s230 **Employment Rights Act 1996**;
 - 6.2.3. any application for strike out and/or a deposit order should be made;
 - 6.2.4. any other necessary case management;
 - 6.2.5. any amendment applications that may be made at least 14 days prior to the preliminary hearing [85].

The Evidence

7. I was provided with an agreed joint trial bundle which ran to 630 pages and an Opening Note prepared by the Respondent's representative. During the hearing an additional 11 pages were added to the joint bundle, taking it to a 641 page bundle.
8. I was also provided with the following witness statements:
 - 8.1. Chris Woolcock, the Claimant (35 pages). He gave oral evidence under Oath and was cross examined on his statement;
 - 8.2. Simon Baker, the Respondent's Head of Risk, Compliance & Ethics (10 pages). He gave oral evidence under Oath and was cross examined on his statement;
 - 8.3. Matthew Gibbs, the Respondent's Operations Manager at its Birmingham Service Centre (7 pages). He gave oral evidence under Oath and was cross examined on his statement;
 - 8.4. Paul Pickering, the Respondent's Service Centre Manager at its Birmingham Service Centre (5 pages). He gave oral evidence under Oath and was cross examined on his statement.
9. I was provided with written closing submissions by both sides (for which I was very grateful) and a bundle of legal authorities on the issue of employment status, provided by the Respondent. The Tribunal made some adjustments to its normal trial process in order to remove or minimise any disadvantage posed by the Claimant's dyslexia. The case was given a 5 day listing and mid-morning and mid-afternoon breaks were put in place. The Claimant was provided with a trial bundle using coloured yellow pages, and a ruler to enhance focus on each line. In addition the Claimant had use of a note pad to write down questions put to him in cross examination, to assist in his understanding of and response to all questions put to him.
10. I wish to express my gratitude to both advocates for the measured, professional and reasonable way in which both conducted this litigation.

Findings of Fact

11. I have not recited every fact in this case or sought to resolve every dispute between the parties. I have limited my analysis to the facts that were relevant to the Issues that I was tasked to resolve. I made the following findings of fact on the basis of the material before me, taking into account contemporaneous documents, where they exist and the conduct of those concerned at the time. I resolved such conflicts of evidence as arose on the balance of probabilities, taking into account its assessment of the credibility of the witnesses and the consistency of their evidence with the surrounding facts.
12. The Claimant owned his own vehicle, a Fiat Scodo van, registered BN53 LYZ [96] that he had purchased in September 2010.
13. In late 2021 the Respondent published an advert for self-employed couriers [384]. It asked potential applicants if they owned or rented their own van and were looking for self-employment, to be managed out of its Birmingham Service Centre ('BSC'). The Claimant applied. On 5th October 2021 the Claimant spoke to Sohail Hussain, the Operations Co-Ordinator for the BSC. Mr Hussain emailed the Claimant after that call [127]. The Claimant was given the Driver Callsign 'B285'. The email provided further information on being a courier for CitySprint including the following directions:
 - 13.1. Please send your availability on a daily basis to Birmingham OPS at citysprint.co.uk;
 - 13.2. Our normal working hours at the office are from 7:00 am to 7:00 pm. If you wish to work after 7:00 pm then please e-mail in on the day and let us know;
 - 13.3. If you wish to reject any work, please call us and advise us for the reason why you wish to reject;
 - 13.4. Once you accept a job, this is your obligation to carry out the job as per your tender agreement.

14. The Claimant insured his van personally on 19th October 2021 until 18th October 2022 [96]. He described his occupation as courier and stated that he intended to use the van 'for carriage of goods for hire and reward'.
15. On 22nd October 2021, at 11.03am, the Claimant signed a Tender Agreement [641]. The electronic time stamp for the agreement was at 11.03am on 22nd October 2021 [112]. In evidence the Claimant accepted that the signature appearing at [641] was his. Having considered the oral and documentary evidence I conclude that Respondent's Tender Agreement was so signed by the Claimant. The key terms of the Tender Agreement stated:

1 Status

If we agree terms on which you will provide us with Courier services you will do so as a self-employed person and not as an employee or worker. To be clear, this means that CitySprint's obligations to you (and your obligations to City Sprint) are more limited than they would be if you were an employee or worker. As a self-employed person, for example, you will not be entitled to claim unfair dismissal, discrimination, any minimum wage, pension contributions, sick pay, holiday pay or a number of other rights and protections which specifically are for employees.

It is also a consequence of your working on a self-employed basis that it will be your responsibility to make necessary returns and tax/NI payments to HMRC. We do not condone tax evasion. If you're not happy or able to comply with this self-employed status then you should not take up this invitation by signing this tender.

2 Obligations about work

We cannot and do not commit to offer you any minimum number of jobs. You are not obliged to accept any job or minimum number of jobs which we offer you, however encouraging or pressing the Operations Team may be. You can reject any job which is offered to you at any time and for any reason.

3 Working with other people

We are happy for you to work with or for anyone else while contracted with City Sprint, even mid job, providing that this additional work does not affect your performance for the job for CitySprint. From our perspective, you may work at the same time with or for another Courier company, yourself, or another business doing the same thing or something different. You have no obligation to work solely for CitySprint. You may advertise your availability to do work, including courier work, for other people, whenever you wish.

5 Using Others to do jobs

If you want to share your vehicle or your motorcycle, your city tracker, or all your jobs with someone else (a substitute) then you can do so in line with the following terms. We operate 2 sorts of substitution depending on what work you want your substitute to be able to do for you. For work where clients have particular safety or security requirements, we will need to have certain details of that substitute on file so we can ensure those requirements are met. ... Where there are no such client requirements, we are content to accept assurances from you about the substitute's suitability and your responsibility for them'

16. Upon signing the Tender Agreement the Claimant was asked to complete a series of questions, which the Claimant accepted that he did complete over the telephone [101]. This required not just a choice between 'yes' and 'no'. It included the input of personal information such as Mother's Maiden Name, Memorable Date and Home Postcode. The purpose of this document was to demonstrate that the Claimant understood the effect of the Tender Agreement that he had just signed. The completed document revealed the following declarations (an extract):

No.	Statement	Answer
1.	I am engaged on a self-employed basis and have to account for my tax, National Insurance and VAT if applicable.	Yes
2.	I'm under no obligation to provide my services and CitySprint UK Limited is under no obligation to give me any work at any time.	Yes
3.	I can send a substitute in my place to do my work so long as they can do the same work I have agreed to do.	Yes
5.	If I do not work I will not get paid. As a self-employed contractor I will not be entitled to holiday, sick, maternity payments or any employee benefits.	Yes
6.	I am an independent business and pay my own costs, such as fuel and vehicle costs for operating in this way.	Yes

17. The Claimant had access to a substitution form. The form differentiated between registered and unregistered substitute drivers. Unregistered drivers could undertake the bulk of the driving jobs. Jobs that required additional

training (for example medical deliveries) could only be undertaken by registered substitute drivers. The form stated:

'If you do not want to provide services to CitySprint yourself, but want to send someone else on your behalf instead, this is substitution. Citysprint encourages couriers to use substitutes when they are not on circuit as this helps to maintain our fleet numbers. Providing a substitute is easy. All you need to do is complete the simple form below and submit this to the local service centre so it can be added to your iFleet profile.'

18. I find that, whilst the Claimant plainly had a right to provide a substitute driver at any time, as a matter of fact he did not do so. The Claimant told the Tribunal **[CW56]**² that he did not know of his right to substitute. The right was explained in clause 5 of the Tender Agreement. If the Claimant did not know, I find that he would not have engaged a substitute, had he known. I conclude this because at **[CW57]** the Claimant stated that passing on a job or letting someone else drive his van was 'foolish'.

19. On 26th October 2021 Jessica Rodrigues from Citysprint emailed the Claimant, stating '*Your profile is completed. Please be patient because at the moment we have a lot people in the queue. We will get in touch in the next days*'. It appears the Claimant was keen to start. He sent a reply email to Ms Rodrigues at CitySprint **[119]** 7 minutes later. The email stated '*Good afternoon, Miss Rodrigues. Thank you, was not sure what was happening. I'm looking to offer my services ASAP*'. He did not refer or mention starting in employment.

20. On 28th October 2021 the Claimant received a reply from Ms Rodrigues **[121]**. It stated:

'Hi Chris, Thanks for your time today. Congratulations, you have now completed the sign up process and will receive your new Callsign shortly via e-mail.'

² **[CW35]** refers to paragraph 23 of Chris Woolcock's witness statement

Here is a link to download and install our CitySprint Courier app. Please can you download the app and have it installed ready to be trained on.

Here is the link to your login details to the Courier Hub. This gives you access to accreditation training which once completed will allow you to access a wider range of jobs. There are three tests you can complete on here.

As discussed, you will receive a call early next week to go over some information that would be useful to you as a new CitySprint Courier and to go over any queries you may have regarding the Courier App or the Courier Hub, if any. After this call, you should have everything you need to make sure that your CitySprint journey is smooth sailing. Have a great weekend.'

21. Once up and running, the Claimant used the Respondent's CitySprint App, as he confirmed at [CW64]. He had been assigned to his local Service Centre, Birmingham Service Centre ('BSC'). Jobs would be received by the App. It would confirm the date, the Claimant's Callsign, the job number, the Service Centre that had sent the job, the collection time and address, the delivery address, the time for delivery and the proposed fee [406].
22. The Claimant was assigned the Callsign B285 on 28th October 2021 [122]. I have seen a record of the occasions when the driver assigned the Callsign B285 was offered a job by the Respondent, and before accepting it, was able to negotiate a better price [394]. The first six entries for the Callsign B285 relate to jobs in 2020, prior to the Claimant undertaking driving work for the Respondent in October 2021. In 2020 that Callsign was used by another driver. The 2020 entries can be ignored.
23. The Callsign entries for B285 from 11th November 2021 [394] until 27th September 2022 [395] demonstrate that the Claimant negotiated an increase in fees for 74 jobs that he had been offered, as the Claimant accepts [CW35]. This evidences that the Claimant did reject jobs until a price for them had been offered that he was prepared to provide driving services for. It was the Claimant's decision whether to work at all, and if working, at what price.

24. The Claimant would typically email the BSC to confirm that he was available for work on any particular day, for example his email on 2nd March 2022 [211] as he confirmed at [CW23].
25. I have seen a record of the days that the Claimant was actively providing driving services and days when he was not [396-397]:

<u>Week</u>	<u>Days Claimant actively driving</u>
Week commencing 8 th Aug 2022	2
Week commencing 15 th Aug 2022	5
Week commencing 22 nd Aug 2022	3
Week commencing 29 th Aug 2022	4
Week commencing 5 th Sept 2022	4
Week commencing 12 th Sept 2022	3
Week commencing 19 th Sept 2022	3
Week commencing 26 th Sept 2022	3
Week commencing 3 rd Oct 2022	0
Week commencing 10 th Oct 2022	1

26. This demonstrates an irregular driving pattern and is consistent with the Respondent's assertion that it was up to the Claimant to choose the days that he wanted to drive. The Claimant was cross examined about his record for the week commencing 3rd October showed 'zero' days activity, right at the end of day 2 of the hearing. The Claimant said in answer, *'I was in tribunal on the 9th of October. Not available. I didn't seek approval, why should I? I was never offered any contract. This is a private matter. I can choose not to work. I didn't have to tell the Respondents.'*
27. I have seen a list of rejected jobs, ie jobs sent to the Claimant's App that he turned down [391-399]. Between 3rd November 2021 and 27th September 2022 the Claimant rejected 114 jobs. The Claimant would record the reason for the rejection, and the reasons given included:

Collection too far		Clashes with another job
Journey too far		No longer available
Insufficient pay		Unacceptable rate
Vehicle issues		Undesirable route
Not enough time		

28. The Claimant confirmed in cross examination that he had refused jobs for economic reasons. The Claimant signed up to the Respondent's Self-Billing Invoice service. This system tracked the jobs undertaken by a courier and billed the Respondent for that work. The Claimant's self-billing invoice for 7th November 2021 appears at **[403]**. It set out the gross amount earned, deducted a Circuit Fee of £20.00 to cover administration costs and gave the net amount due to the driver.
29. On occasion, and ahead of a busy period, the Service Centre asked the Claimant to confirm when he would be available to drive. An example is the email sent on 24th December 2021 at 8.11am **[179]**. It stated, *'Can you confirm if you're available over Christmas and if so, what dates and times?'* The Claimant replied at 4.23pm **[180]** stating, *'Not sure yet, just need a few days to recuperate. Won't be available on the 29th as expecting a delivery. I enjoyed the job today dropping off the medication. If there are any jobs like that then ping me and I'll be front and centre. Otherwise, Boxing Day I'll be off and maybe a couple of days later'*.
30. The Claimant was responsible for his own tax. He submitted a Tax Return for the year ended 5th April 2022. HMRC confirmed his tax calculation, based on that Return **[295]**. It recorded that Claimant's profit from self-employment to be £5,873.00 for the year. As this was well below the Claimant's personal allowance, his tax due was assessed as nil.
31. I note the following from the Claimant's witness statement:

- 31.1. **[CW1]** I also believe I had been doing the same job as a CitySprint PAYE Courier;
- 31.2. **[CW2]**: I had also been working under similar conditions to CitySprint PAYE medical couriers;
- 31.3. In **[CW8]** the Claimant accepts that he signed the contract summary **[101]** but asserts that questions had been misrepresented when they were read out to him on the phone, without saying how.
- 31.4. In **[CW27]** the Claimant asserted that out of 73 jobs he was only allowed to reject 3 jobs. However this is plainly contradicted by the list of rejected jobs already referred to at **[391]** and the Claimant's own evidence at **[CW34]**.
- 31.5. In **[CW55]** the Claimant explained why he was not available for work (or had reduced availability) in October 2022. The Claimant explained that the MOT on his van had expired. He had also arranged a job interview in a prison and had an overdue chiropractor appointment.
32. If a self-employed courier does not make himself available for work or accept a job for a period in excess of two weeks, then jobs are no longer sent to that courier, unless he indicates an availability to work. In the absence of indicating availability or accepting a job, the Respondent considered that the Claimant had ceased offering his driving services to them, and as such, the Claimant's engagement with CitySprint ended on 13th October 2022.
33. I turn now to the relevant law.

The Law

34. The law that is relevant to the Claimant's claims is as follows: The starting point is s230 **ERA**, which states:

'(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 worker³ 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;"

35. The expression 'employment' is defined for the purposes of discrimination claims by s83 **EqA**. It states:

(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;

36. The definition used by the Equality Act is '*employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour ...*'. This has in common with the 'worker' definition the extension beyond a contract of employment and the emphasis on personal service, though it lacks the exception for professional clients and/or business customers. Whilst the wording between s230 **ERA** and s83 **EqA** are different, Lord Wilson noted in **Pimlico Plumbers v Smith** [2018] UKSC 29, that the distinction between the wordings of the two definitions was 'a distinction without a difference'.

37. An independent contractor is one who enters a contract for services as opposed to a contract of employment. The employer buys not so much the right to the worker's service, as the right to the end product of his labour. He pays him not so much to do the job as to get the job done. Independent contractors are often described as being self-employed. The contractor is independent in the sense that he is responsible for making his own decisions in performing the job, by way of contrast with the servant who is subject to the directions of the employer. Economically, he stands on his own two feet. He is in business on his own account. An employee is one who serves, in the sense that he puts himself and

³ 'Worker' is identically defined in regulation 2 of the **Working Time Regulations 1998**.

his labour at the disposal of another (his 'employer'), in return for some remuneration in cash or kind. The resulting contract is called a contract of employment. The employee sells his labour; the contractor sells the end product of his labour. In the one case the employer buys the individual; in the other he buys the job. The current guidance on the Working Time Regulations puts it as follows: *'If you are self-employed, running your own business and are free to work for different clients and customers, [the Regulations] do not apply to you'.*

38. The Tribunal's focus should be on the contract and the relationship of the parties rather than exclusively on dominant purpose: **Jivraj v Hashwani** [2011] UKSC 40. In **Uber BV v Aslam** [2021] UKSC 5, Lord Leggatt said *'The wording of the contractual documents while relevant, is not conclusive. It is also necessary to have regard to how relevant obligations are performed in practice'*. He continued:

'The vulnerabilities of workers which create the need for statutory protection are subordination to and dependence upon another person in relation to work done. A touchstone of such subordination and dependence is the degree of control exercised by the punitive employer over the work and services performed by the individual concerned. The greater the extent of such control, the stronger the case for classifying the individual as a worker who is employed under a worker's contract.'

39. During the course of the hearing HHJ Tucker handed down her judgment in **Patel v DPD Group Ltd** [2024] EAT 202. I arranged for a copy of the decision to be sent to the parties on day 2. It was an instructive authority in the same courier industry as the Respondent. The Judge looked at DPD's employed drivers and its 'owner franchise drivers'. The owner franchise drivers had their own van, were free to accept or decline courier jobs, and once accepted could out source the job to a substitute driver. Judge Tucker noted *'it does not follow the Court must ignore the written documents completely. The question the Court must always ask is whether those documents reflect the reality and are a genuine reflection of the actual relationship. If they do, that which they state is clearly of critical significance.'*

40. The obligation to render personal service is important. If the contract allows the individual to provide work or services through someone else, a substitute, the requirement of personal service is not satisfied. In **Pimlico Plumbers** there was a conditional right of substitution in that work could only be substituted to another Pimlico Plumbers operative. This arrangement did not negate the 'personal service' element of the contract. Thus an unconditional or unfettered right to substitute is likely to negate personal service. A conditional right of substitution may not. In **Stojisavljevic v DPD Group Ltd** [2020] EAT 0118, DPD engaged employed drivers and owner franchisees. The owner franchisees were entitled to engage a driver of their choice, subject to that driver having a driving licence and being trained in DPD driver standards. Those two conditions were not enough to create worker status. The right to substitute a driver of their choice was inconsistent with the personal service element of worker status.
41. Once it is established that there is a right to substitute that is not a sham or device to avoid worker status, it does not matter how often the right is exercised or indeed whether the Claimant exercised it: **Community Dental Services Ltd v Sultan-Darmon** [2010] EAT 0532. In **Independent Workers Union of Great Britain v Central Arbitration Committee & Rooffoods Ltd t/a Deliveroo** [2021] UKSC 0155, Underhill LJ observed, '*It cannot be the case that whether riders working on identical terms fall to be treated as workers depends on how often they choose to take advantage of their right to do the work through substitutes*'. Substitution only in circumstances in which the individual is unable to perform his service is unlikely to oust worker status. In **UK Mail Ltd v Creasey** [2021] 9 WLUK 438, EAT, despite the individual not having appointed a substitute, he was not deemed to be a worker because he did not have to be unable to perform his duties before he could send a substitute. It was always a matter for him.
42. The 'mutuality of obligations' (an obligation on the employer to provide work and an obligation on the employee to do it). Mutuality is a pre-requisite for *any* contract to exist, and therefore necessary for both the 'employee' and 'worker' definitions. There are three questions to be answered:

- 42.1. Did the worker undertake to provide his own work and skill in return for remuneration?
 - 42.2. Was there a sufficient degree of control to enable the worker fairly to be called an employee?
 - 42.3. Were there any other factors inconsistent with the existence of a contract of employment?
43. Relevant questions are likely to include:
- 43.1. What is the degree of control: the greater the scope for individual judgment on the part of the worker, the more likely he will be an independent contractor.
 - 43.2. What was the amount of the remuneration and how was it paid? A regular wage or salary tends towards a contract of service; the submission of invoices for set amounts of work done, towards independence.
 - 43.3. Did the worker invest in his own future: who provided the capital and who risked the loss? Who provided the tools and equipment?
 - 43.4. Was the worker tied to one employer, or was he free to work for others (especially rival enterprises)?
 - 43.5. How strong is the obligation on the worker to work for that particular employer, if and when called on to do so?
 - 43.6. How did the parties themselves see the relationship?
 - 43.7. What were the arrangements for the payment of income tax and national insurance?
 - 43.8. How was the arrangement terminable?
44. How the parties themselves label their relationship is a relevant but not conclusive consideration. The status of the worker is to be decided by an objective assessment of all the factors, and the label attached by the parties is but one of those factors.
45. I shall now turn to my conclusions on those issues:

My Conclusions

46. Ultimately I have been tasked to determine the following questions:
- 46.1. Did the Claimant enter into or work under a contract of employment?
 - 46.2. Did the Claimant enter into or work under any other contract ... whereby the Claimant undertakes to do or perform personally any work or services for another party to the contract whose status is not ... that of a client or customer of any ... business undertaking carried on by the individual?
 - 46.3. Did the Claimant enter into or work under a contract of employment, a contract of apprenticeship or a contract personally to do work?
47. When considering the questions posed at (46.1) to (46.3) which all relate to the type of contract that the parties entered into, I remind myself of the guidance provided by HHJ Tucker: *'The question the Court must always ask is whether those documents reflect the reality and are a genuine reflection of the actual relationship. If they do, that which they state is clearly of critical significance',* and *'How the parties themselves label their relationship is a relevant but not conclusive consideration. The status of the worker is to be decided by an objective assessment of all the factors, and the label attached by the parties is but one of those factors'.*
48. In this matter the Claimant signed the Courier Tender Agreement **[103]**. It's terms, quoted above, could not be clearer: *'If we agree the terms on which you will provide us with Courier services, you will do so as a self-employed person and not an employee or a worker'.* The Claimant accepted, and I so find, that he signed that Courier Tender Agreement. Once signed, the Claimant then completed a declaration, quoted above, that he understood and accepted the Tender Agreement's terms. He was taken through the declarations by telephone and gave an answer to each one. I find on the balance of probabilities that the Claimant did so freely and that his answers were correctly recorded. I reject the suggestion made in the Claimant's witness statement that

he did not read the Tender Agreement and/or that he signed it without understanding its terms. I also reject the suggestion that the questions posed in the declaration were misrepresented to him. No actual misrepresentation has been identified or established. I am supported in the belief that the Claimant understood the Agreement correctly because the Claimant, four days after entering the Agreement and completing the declaration, emailed Ms Rodrigues at CitySprint [119] stating '*Good afternoon, Miss Rodrigues. I'm looking to offer my services ASAP*'. I consider this to be a very telling statement, as it strongly indicates that the Claimant very much understood the type of agreement that he had just entered.

49. In my Judgment the contract and declaration had no obligation on the Claimant personally to do work, and thus the Courier Tender Agreement could not be fairly described as a contract of employment or any other contract with an obligation personally to do work. I reach this conclusion because:

- 49.1. Clause 1 Status: '*If we agree terms on which you will provide us with courier services, you will do so as a self-employed person and not as an employee or a worker*'; "
- 49.2. Clause 2 Obligations about work: '*We cannot and do not commit to offer you any minimum number of jobs and you're not obliged to accept any job or minimum number of jobs which we offer you. ... You can reject any job which is offered to you at any time and for any reason*';
- 49.3. Clause 3 Working with other people: '*We are happy for you to work with or for anyone else while contracted with CitySprint, even mid job From our perspective, you may work at the same time with or for another Courier company yourself, or another business doing the same thing or something different. You have no obligation to work solely with City Sprint*';
- 49.4. Clause 4 Service Hours: '*You may not want to work on a particular day or to particular time. That is your choice*';
- 49.5. Clause 5 Using others to do jobs: '*If you want to share your vehicle or your motorcycle, your city tracker, all your jobs with someone else, the substitute. Then you can do so. ...*';

50. I turn to now consider the reality of the working relationship and whether the Tender Agreement reflected that reality and/or was a sham agreement. I do by reference to the legal tests considered instructive on this point:

50.1. **Did the Claimant undertake to provide his own work and skill in return for remuneration?** As the Claimant himself made clear in his email to Ms Rodrigues at CitySprint [119] stating '*Good afternoon, Miss Rodrigues. I'm looking to offer my services ASAP*'.

50.2. **Was there a sufficient degree of control to enable the Claimant fairly to be called an employee?** In my judgment there was not. Whilst jobs would be sent to the Claimant with a proposed fee, the Claimant could first decide whether to offer his services on any particular day or not. Various reasons for refusal were stated in the Claimant's witness statement, noting that no reason had to be given at the time. The reasons included a Van MOT, medical appointments, Tribunal hearings etc, a chiropractor appointment and a prison job interview. Once the Claimant had indicated that he was available to drive, he could still refuse any job, and did so regularly, for a whole host of reasons. If he was prepared to do a job, but not at the price offered he had the power to renegotiate it, which he did on a number of occasions. In fact it was difficult to discern any real control that the Respondent had over the Claimant, beyond not paying him for a job that he accepted and then failed to deliver. All of the key decisions to be made about work were the Claimant's to make. Nothing could be imposed on him.

50.3. **Were there any other factors inconsistent with the existence of a contract of employment?** The three principal factors are the lack of control, lack of mutuality of obligations and the courier accepted risk in the success of his business. The Claimant could (i) accept a job for the offered price, (ii) accept it for a higher renegotiated price, (iii) accept it and send someone else on his behalf, for whatever fee he agreed with

the substitute, or (iv) reject it. He provided his own van, paid for its MOT and running costs and insurance.

- 50.4. **What is the degree of control?** For the reasons stated, in this relationship the Respondent had very little control over its self employed couriers.
- 50.5. **What was the amount of the remuneration and how was it paid?** Payment was made gross of tax upon the submission by the courier of an invoice, which he could do himself or use the Respondent's self-billing system. The amount of the invoice reflected the jobs that the Claimant had accepted and delivered, at either the price offered or a higher negotiated fee.
- 50.6. **Did the Claimant invest in his own future: who provided the capital and who risked the loss? Who provided the tools and equipment?** As stated the Claimant provided his own van (a capital expense) and insured it personally to provide courier services. He paid to maintain his own van. These are costs and risks that the Claimant took, which he would still have to pay even if he was given no or insufficient work. This is in contrast to an employed driver, who would, in all likelihood, be provided with an insured, maintained vehicle.
- 50.7. **Was the Claimant tied to one employer, or was he free to work for others (especially rival enterprises)?** The Tender Agreement was clear on this point. The Claimant could undertake his own deliveries or deliver for rivals if he wished. If he completed a rival delivery, he could check to see if there was a Citysprint job for the trip back home.
- 50.8. **How strong is the obligation on the Claimant to work for CitySprint, if and when called on to do so?** As stated there was no obligation on the Claimant to take any job when called on to do so. He could reject or accept only if a higher fee was agreed.

- 50.9. **How did the parties themselves see the relationship?** For the reasons stated above (including the Claimant's email to Ms Rodrigues and his acceptance / rejection / renegotiation of jobs) it is my judgment that both parties saw themselves in a relationship that was accurately and fairly described in the Courier Tender Agreement and which had no personal obligation to provide work.
- 50.10. **What were the arrangements for the payment of income tax and national insurance?** The Claimant was paid gross and made his own arrangements for the payment of any tax or national insurance.
- 50.11. **How was the arrangement terminable?** The arrangement was terminable if the Claimant did not accept any jobs for a period of time, could not confirm that his vehicle was roadworthy, or failed to indicate an availability to work. All of these matters were in the Claimant's control.
51. For all of the above reasons it is my judgment that there was no personal obligation to provide work. The Claimant was a self-employed contractor and did not, at any time or at all, acquire the status of employee or of worker, as defined by statute.

My Judgment (in summary)

52. It is the Judgment of the Tribunal that:
- 52.1. At all material times the Claimant was engaged as a self-employed contractor.
- 52.2. The Claimant's claims of direct race discrimination (s13 Equality Act), harassment related to race (s26 EqA), victimisation (s27 EqA), Holiday Pay and Unauthorised Deductions are dismissed due to a lack of jurisdiction.

Case Number: 1301504/2023

Judgment delivered orally on 1st August 2025

Approved on 1st August 2025

Employment Judge Gidney