EMPLOYMENT TRIBUNALS

Claimant: **Melissa Banbury**

Respondent: **Culture Squared CIC**

Heard at: **Leeds** **On:** **4 and 5 August 2026**

Before: **Employment Judge Bright**

Representation
Claimant: **In person**
Respondent: **Ms Akbar (legal consultant)**

RESERVED JUDGMENT

1. The claimant was an employee and worker of the respondent at the relevant time for the purposes of section 230 Employment Rights Act 1996 and section 83 Equality Act 2010.

2. The claim of disability discrimination, victimisation and unauthorised deductions from wages will therefore proceed.

FULL REASONS

Background

1. The claimant was engaged by the respondent as a Creative Producer from 10 February 2025 until 12 May 2025, working on the Bradford Literary Festival ("the festival"). The claimant presented an employment tribunal claim on 13 August 2025 (following early conciliation from 7 June 2025 to 19 July 2025).

2. The claimant claims direct disability discrimination (section 13 Equality Act 2010 ("EQA"), a failure to make reasonable adjustments (sections 20 and 21 EQA), victimisation (section 27 EQA) and unauthorised deductions from wages (section 13 Employment Rights Act 1996 ("ERA"). A complaint of unfair dismissal was struck out at a preliminary hearing on 9 January 2026 because the claimant did not have sufficient continuity of service for the

Tribunal to have jurisdiction to hear that complaint. The claimant also indicated her intention to apply to amend her claim to include complaints in relation to whistleblowing detriment and holiday pay. Those applications are yet to be determined.

3. A preliminary hearing on 9 January 2026 identified the issues in the claim and made orders for the preliminary issue of status to be determined at a preliminary hearing (orders sent to the parties on 13 February 2026).

The issues

4. The issues for this preliminary hearing were:
   4.1. Was the claimant an employee of the respondent within the meaning of section 230 ERA? (for the whistleblowing complaint (subject to amendment));
   4.2. Was the claimant an employee of the respondent within the meaning of section 83 EQA? (for the discrimination/victimisation complaints);
   4.3. Was the claimant a worker of the respondent within the meaning of section 230 ERA? (for the unauthorised deductions from wages complaint and holiday pay complaint (subject to amendment)).

Arrangements for this preliminary hearing

5. The claimant is neurodivergent (she has a formal ADHD diagnosis and is undergoing an autism assessment).

6. The claimant made a request to the Tribunal for reasonable adjustments, (pages 620 and 621 of the file of documents for the preliminary hearing (the "bundle")). It was agreed at the outset of the preliminary hearing that the Tribunal would accommodate such adjustments as were reasonable and in line with the overriding objective to deal with cases justly.

7. Adjustments were made to the timetabling of the hearing and other arrangements, to ensure that the claimant was able to fully participate. The respondent's failure to comply with orders relating to the provision of a hard bundle was able to be remedied by allowing the claimant sufficient time to mark up and familiarise herself with the bundle during a break.

The evidence

8. The claimant gave evidence from a written witness statement and the respondent called Ms Syima Aslam (Chief Executive Officer and Artistic Director of the respondent) to give evidence on its behalf, also from a written witness statement.

9. The parties presented an agreed bundle of 621 pages. Reference to page numbers in these reasons are references to the pages in that bundle.

The facts

10. I made the following findings of fact, on the evidence before me. Where there was a dispute, I resolved it on the balance of probabilities. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the Tribunal must consider in order to decide the issues. If I have not mentioned a particular point it does not mean that I have overlooked it. It is simply because it is not relevant to the issues.

Advertisement for freelance creative producer

11. The claimant responded to an advertisement for a 'freelance creative producer' (pages 65 - 70). The advert stated, "BLF is looking for a detail-focused, enthusiastic and creative person to join the festival team as a Freelance Creative Producer". It was not disputed that this was a role for a fixed term in the run up to and during the festival. Under the heading "main duties and responsibilities" the advert provided that the successful applicant will work "Under direction of the Artistic Director". It expressed a series of expectations of "all staff", including undertaking relevant training and development as required and being open to the opportunities to mentor, train and develop colleagues and "carry out any other tasks that will be required on an ad hoc or continuing basis, commensurate with the general level of responsibility of the post". I agreed with the claimant's witness statement (paragraph 9) that this description is more consistent with a position inside the respondent's organisation, subject to management direction, not an independently organised service. The advert set out that the working hours were 40 hour per week, including a 30 minute unpaid break each day. It expressed that the hours could be worked flexibly but the role was "entirely office based". It referred to a "salary" of £30,000 - £36,000 per annum pro rata and to the engagement as a "freelance fixed term contract".

12. The bundle also included a job description for an employed 'Creative Producer' role (pages 585 -590) by way of contrast with the job description for the claimant's role. I accepted Ms Aslam's evidence in cross examination that, at other times of year, the employed Creative Producers carried out other work, but that during the period for which the claimant was engaged, there was 'overlap'. However I agreed with the claimant (paragraph 12 of her witness statement) that the only significant differences between the two job descriptions were the fixed term/permanent nature of the different roles, the provision of 25 days' annual leave plus bank holidays and a 3% employer contribution to pension. Those differences related to the classification of the role and benefits, not the substance of the creative producer function.

Offer

13. The claimant was offered the role of Freelance Creative Producer on 22 January 2025 (page 71) in a letter which stated, “this is a fixed term contract beginning on 10 February 2025 until 6 July 2025, however there may be scope for additional hours post festival which will be discussed with your line manager”. The claimant did not dispute that she believed and wished to be engaged as an independent contractor. She gave evidence that she previously worked freelance and understood her engagement in this role to be no different. However, it was not disputed that she was not invited to tender through a company, submit a commercial proposal, quote for specified deliverables, price a completed project, employ staff or explain how an independent business would provide the service (paragraph 7 of the claimant’s witness statement).

14. The offer letter identified the claimant’s “working hours” as being 40 hours per week between Monday to Friday including a 30 minutes’ unpaid break.” The offer letter says, “Flexibility of working hours is essential for your role. This will include working longer hours during the festival period 23 June – 6 July 2025…you will report to the CEO and Artistic Director”.

15. The respondent’s recruitment records described the claimant and one other as the “most suitable” candidates (page 579) for the role.

Negotiation

16. Before finally accepting the offer, the claimant negotiated an increase in the daily rate of pay by £5.50 per day for the period leading up to the festival, but not during the festival itself. The claimant explained to the respondent how, “this adjustment would make a meaningful difference to my cash flow as a freelancer, particularly as I plan to take on additional rent to fully immerse myself in Bradford and be present in the office as required throughout the contract” (page 82). She referred to the rate of pay being below her rate of pay in her previous freelance contract. The respondent agreed to increase the day rate to £130.50 per day with the “festival amount remaining at £180 pd” (page 81). Although the claimant gave evidence in cross examination that this rate was far below what she would expect to see as a freelancer, she nonetheless agreed that amount and signed a contract on those terms. The respondent characterised the claimant’s request for an increase in the day rate as evidence that the claimant set her fees or negotiated her commercial rates, but I agreed with the claimant (paragraph 15 of her witness statement) that the exchange demonstrated the limits of the claimant’s bargaining power. She responded to an advert for a rate already fixed by the respondent based on a pro rating of an annual salary, she requested a pay increase, the request required CEO approval and the claimant worked at the rate the respondent authorised.

Written agreement terminology

17. The written agreement between the parties (page 84 - 93) was signed by the claimant on 29 January 2025 and, although it was headed "contract of services", it referred to "This contract for services…" and to the claimant as "the contractor" throughout. It stated, "the contractor is appointed as a contractor to the client". It required the claimant to perform the "duties relating to the position of creative producer and other duties required by the client". I agreed with the claimant (paragraph 16 of her witness statement) that this gave the respondent the power to expand or alter the claimant's duties according to the respondent's needs. The written agreement also specified that, "The contractor agrees to devote their time, attention and skill to the business of the client" and, "while the contractor's method of working is entirely their own and they are not subject to the control of the client, they shall nevertheless comply with any reasonable requests of the client". The written agreement required the claimant to comply "promptly and faithfully" with the respondent's lawful and reasonable requests, keep the respondent informed of progress and liaise with the CEO regarding the "day to day performance" of the work (pages 84 – 85). I agreed with the claimant's submissions that this close attention in the written agreement to the need for the claimant to follow the respondent's instructions and account or report to the respondent suggested the respondent expected to have a high level of control over the claimant's work, including how she exercised her judgment and carried out the role and that it did not expect the claimant to engage in other work.

18. Ms Aslam gave evidence that any wording of the written agreement or other documents mentioning "employees" was legacy wording but that the nature of the arrangement with the claimant was very clear: she was to be an independent contractor. I agreed that the arrangement was intended by the respondent and the claimant to be a freelance contractor relationship at the time the written agreement was signed. However, as the claimant stated in her witness statement (paragraph 20), the explicit terms in the written agreement protected the respondent's operational control while limiting the freedoms ordinarily associated with being in business on one's own account. The respondent could require additional duties, direct the claimant's daily performance, set her hours, organise her schedule, require attendance and travel, control its systems and information, take ownership of the resulting work and impose extensive obligations on termination. By contrast the claimant had no express right to substitute another person, no freedom to choose her own systems and no authority to determine the final programme outcome.

The written agreement provided that, “Nothing in this agreement shall be construed as constituting the relationship of employer and employee and you hereby represent, warrant and undertake to the client that you are an independent contractor and not an employee of the client…”. I find, for the reasons set out below that, in fact, the written agreement was not the entire agreement between the parties. There were contractual obligations which arose outside of that written agreement and which modified or varied from the terms of that agreement (see for example, the findings of fact relating to mutuality of obligation, personal service, working from home and overtime, below).

Mutuality of obligation

19. The written agreement provided that, “the client shall not be obliged to provide the contractor with any work and the contractor will not be obliged to accept or perform any work offered, unless and until the client has requested and the contractor has agreed to perform such work” (page 85). I find that this non-mutuality of obligation clause did not reflect the reality of the arrangement between the parties during the period of the claimant’s engagement. There was clearly a contractual expectation that the claimant would fulfil her side of the contract, working the required 40 hours per week, and additional hours during the festival period, until the end of the fixed term and that the respondent would provide and pay for that work. There was no expectation that the respondent would provide work, or that the claimant would be available to work, after the end of the fixed term but I find there was mutuality of obligation for the duration of the fixed term. The claimant did not refuse work, nor did the respondent fail to offer work and there was a clear expectation by the respondent that the claimant would complete the fixed term, in keeping with the tenor of the advert, offer letter and written agreement. I accepted the claimant’s evidence (paragraph 26 of her witness statement) that the growing workload placed on the claimant which caused her to try to negotiate paid overtime evidenced the fact that there was no genuine freedom to refuse work. The claimant did not and could not, in reality, have declined to organise certain events, or returned work to the respondent if, for example, she did not have the capacity to do it within the allocated hours.

Personal service/substitution

20. The written agreement did not contain a substitution clause enabling the claimant to appoint or send another person along to do the work on her behalf. The respondent did not dispute the claimant’s evidence (paragraph 29 of her witness statement) that no substitution procedure, approval route or replacement mechanism was discussed at interview, when the written agreement was issued or during the claimant’s engagement. Ms Aslam gave evidence that, if the claimant had wanted to appoint a substitute there would

have had to be “a discussion” about it. The respondent submitted that substitution was not prohibited but was never sought or tested by the claimant.

21. However, from the evidence that, in reality, if the claimant had sought to substitute someone else, the respondent would not have agreed for the following reasons. Ms Aslam accepted in cross examination that the claimant was contracted as a person on the basis of her cv and personal skills and experience. The claimant was also personally required to obtain a DBS check, which was a requirement attaching to her personal suitability to perform the role, and could not have been satisfied by sending a replacement. Any replacement would have required the respondents’ permission, office access, a corporate email account, access to confidential calendars and drives, Teams, Trello, Dropbox, Google Drive, Atlassian and SPOT, staff induction and training in the respondent’s bespoke programme and financial systems (pages 371 – 375). As the claimant stated at paragraph 33 of her witness statement, any substitute would also require a detailed knowledge of the live programme and relationships the claimant was personally managing. On balance I find that the lack of a substitution clause in the written agreement was unlikely to have been an omission. The rest of the contractual terms in the written agreement are detailed and precise and I concluded that the omission of a substitution clause was more likely than not to have been intentional, because it was always intended to be a contract for the claimant to do the work personally.

Other work

22. The written agreement provided that the contractor was obliged to “devote their time, attention and skill to the business of the Client, as shall, in the opinion of the Client, be necessary for the proper and timely performance of the Services;…not to undertake any additional activities or accept any other engagements that lead or might lead to any conflict of interest between the Contractor and the best interests of the Client during their appointment” (page 261). The respondent submitted and Ms Aslam gave evidence that the claimant could have worked for other clients during the duration of the contract. However, on 7 April 2026 the respondent’s office manager, Trudy Powell, reminded the claimant that, “While the contract doesn’t prohibit working with other clients, it does include a clause requiring that no additional work should create a conflict of interest or interfere with your responsibilities at BLF. We trust this will continue to be managed professionally” (page 261). I accepted the claimant’s evidence that the implication of that email in combination with the wording of the written agreement requiring her to ‘devote her time, attention and skill’ and the nature of the work, meant that the claimant was expected to dedicate her time to the respondent and was not expected I reality to take on outside work.

Payment

23. I find that the claimant did not "price her own work", as submitted by the respondent. The respondent offered payment at a rate of pay equivalent to a pro-rata salary for an employed creative producer. The claimant did not pitch for a contract, tender for the work or work at a rate she determined, although she was able to negotiate before she started a higher rate of payment for part of the contract period.

24. The written agreement required the contractor to submit a monthly invoice for their daily fee, and stated that the contractor was liable for payment of income tax and national insurance. The written agreement included a clause by which the contractor agreed to indemnify the respondent for any tax or national insurance liabilities. This clause reflected the reality of the arrangement between the parties: the claimant invoiced monthly on invoices which carried the registered address for the claimant's business (page 530). The claimant accepted that she was not entitled to enrolment in a pension nor pension contributions from the respondent. Nor was she entitled to payment during periods of holiday or sick leave.

Working hours and overtime

25. The written agreement referred to standard working hours of 40 hours per week (including a 30 minute unpaid lunch break each day), to be "scheduled between 8am and 6pm in agreement with their line manager". The written agreement referred to additional hours during festival weeks, but stated, "no overtime payments will be made; however, Time Off in Lieu (TOIL) may be agreed in writing with the line manager in exceptional circumstances". The claimant's time sheets (for example page 526) showed that her start times varied somewhat and occasionally were outside the window required by the contract. It was accepted that employed producers, by virtue of their contract, were able to take time off in lieu, which the claimant could and did not take.

26. When the claimant became concerned that significant additional hours would be required to complete the work allocated to her, she sought to negotiate payment for overtime (page 249 - 250). I accepted her evidence in cross examination that she sought to clarify and renegotiate issues around overtime because "it didn't feel like it was a freelance contract in reality". The respondent agreed to pay her an enhanced rate of £16.66 per hour for any overtime hours, despite the written agreement providing that overtime payments would not be made (page 260 - 261). The respondent imposed a requirement that the claimant submit time sheets showing the overtime hours worked to enable them to process payment.

27. The claimant continued to try to engage in negotiations for a higher rate of pay for overtime hours (pages 255 – 256, 258 – 259) but the respondent

refused to agree to the claimant's proposals, reiterating that, while they would pay for overtime, it would not be at an increased rate. In an email dated 6 May 2025 Trudy Powell wrote, "The offer of paid additional hours was made as a gesture of goodwill and goes beyond the original freelance terms. Its not something we offer to permanent employees, and we're aiming to apply this fairly and consistently across the team". The claimant worked overtime for the respondent at the rate set by the respondent until the termination of her engagement on 12 May 2025.

28. Following termination of the claimant's engagement, she invoiced the respondent (page 531) for overtime at the rate she had previously pitched of £20 per hour and bank holidays at £25 per hour. She also added a late payment fee and statutory interest. The claimant accepted in cross examination that she had researched the late payment of commercial debts in order to add interest to her invoices. She accepted that late payment interest applied to debts between businesses and she explained that she was trying to assert her rights as a true freelancer. The respondent submitted that the claimant's attempt to add late payment interest showed that this was a commercial dispute. The claimant submitted that the fact the respondent refused to pay the additional sum was evidence that she was treated as an employee, rather than a freelance contractor who set her own rate of payment. I find that, although the respondent's refusal to pay the enhanced rate is not inconsistent with a commercial dispute, the respondent in fact refused to engage with the claimant's efforts to negotiate. I find that, although the claimant was trying to behave as an independent contractor by billing for the overtime rate she set and applying interest, the respondent refused to engage with her on that basis and instead paid her the rate it determined appropriate.

Equipment and data storage

29. The contract required the respondent to provide the necessary office facilities, although the claimant would be required to use her own laptop for duties. That clause reflected the reality of the arrangement. The contract also provided that, "All work must be accessed and saved exclusively on the client's approved systems, and no documents or data shall be stored on the contractor's personal hardware to ensure data security and confidentiality". The respondent gave evidence that this was required because the claimant had access to personal data, such as personal email addresses and fees for speaking of prominent cultural figures who were potential speakers at the festival. The contract also contained a clause making over all intellectual property to the respondent and a restrictive covenant (page 90) preventing the claimant inducing clients of the respondent to case or reduce their business with the respondent, preventing the divulging of copyright material and preventing the claimant holding herself out as being connected with the respondent.

Self-identification

30. I find that, at the time the written agreement was signed, the claimant and respondent both intended that she would be a freelancer. Throughout the disputes about payment for overtime (discussed above) and working from home (considered separately below), the claimant made regular reference to her status as a freelancer and her right, as a freelancer, to determine her method of working practice. She accepted repeatedly in cross examination that she was trying to assert her rights as a freelancer at the time. The claimant's emails (for example on 17 April 2025, page 255) made repeated reference to the claimant's status as a 'freelancer' and the rights that she believed attached to that status (for example reserving the "right to determine her method of working practice outside of core contracted hours"). However, I accepted the claimant's evidence in cross examination that the arrangement did not feel like a freelance contract in reality.

Risk/profit

31. The written agreement provided that the claimant, "will bear exclusive responsibility for the discharge of income tax and the payment of NI as a self employed person". The contract also required the claimant to have her own insurance. However, there was insufficient evidence of anything else in the contractual arrangement between the parties which required the claimant to shoulder any kind of risk or enabled her to profit from her own sound management of her resources. She could not benefit from the efficient use of time, because she was expected to work the full 40 hours stipulated in the contract. She would not benefit financially from successful sales of events at the festival nor would she bear any of the loss if the festival, or the events she organised, was not a success.

Induction

32. The claimant attended training on the respondent's budget, programme and IT systems, including SPOT (an excel spreadsheet system). The respondent did not dispute that the induction the claimant attended on 28 February 2025 (pages 345 and 347) was conducted on an amended standard staff template designed for employee induction, rather than the respondent's contractor induction checklist (page 576). References to an HR provider and probationary period were crossed out, but the respondent signed the remainder of the induction form to indicate that the claimant had been inducted as an employee. I accepted the claimant's evidence that, whatever the form said, the claimant knew the intention was for her to be freelance.

Control and autonomy

33. When she commenced working with the respondent, the claimant was allocated programme strands (themes/areas of interest) to arrange for the festival (page 94). Those strands had already been allocated to the claimant by the respondent before she attended for her first day and she was provided with a document detailing the 'Artist Journey', setting out how to work through the process of engaging speakers for events (page 134 – 135). The claimant did not have any say in which strands or events she worked on. The strands of work were entered into the respondent's information management system, Trello, before the claimant commenced work. The claimant could not use a different system of information management.

34. The claimant inherited some work from a predecessor. Certain partnerships and events had already been arranged or determined before the commencement of the claimant's engagement and she was required to continue the work previously done. In other cases, the claimant proposed authors or speakers for particular strands (for example, as shown at pages 166 and 178) but her suggestions were not necessarily approved by Ms Aslam (as with the Sacred Music programme, pages 271 – 276 and 279 – 285).

35. The respondent did not dispute that the written agreement required the claimant to report to the Artistic Director, Ms Aslam. The respondent accepted that no event entered the festival without artistic and budgetary approval, that the Artist Journey required sign-off before invitations were issued (pages 134 – 135) and that the claimant could not make a binding commitment without consent (page 89). The respondent's evidence was that the respondent was accountable for its own programme, is a funded organisation which reports to its funders and every event carried its name, so the approval process was no more than due diligence.

36. However, I find that the level of managerial approval for decisions at all stages of the process of engaging speakers for the festival, evidenced by the email chains contained in the file of documents, showed a significant level of control over the claimant's work. I accepted the claimant's evidence that, from the commencement of her engagement, Ms Aslam closely line managed all decisions and processes. I find that the involvement of Ms Aslam in directing the claimant's day-to-day work amounted not just to 'green lighting' certain decisions, but also included instructing the claimant how to present the information, for example, the post-it note wall (page 142), requiring her to be present for certain team meetings (pages 229 – 230) and instructing her on who to contact and how to work through the speaker engagement process (page 134). The claimant had no separate budget at her disposal and was not given budgetary information or informed of the budgetary constraints within which she was required to work. The written agreement required the

claimant to liaise with Ms Aslam regarding the day-to-day performance of the role (pages 84 – 85) and I find that the control exerted by Ms Aslam over the claimant's work was exactly the same level of control exerted over the work of the creative producers who were employees of the respondent.

37. It was not disputed that the respondent redirected the claimant's work at short notice to urgent tasks outside the programme strands and other work of producing the festival (paragraph 76 of the claimant's witness statement). I accepted the claimant's evidence that, on 13 March 2025, Ms Aslam personally instructed the programming team including the claimant to assist with an external Bookseller Book Awards judging obligation she had undertaken. The claimant was not asked to accept the additional work, but was instructed to interrupt her planned work to carry it out in time for a particular deadline.

38. I find that the respondent's management of the claimant's work went beyond merely management guidance. There was insufficient evidence of employed creative producers being managed any differently by Ms Aslam or subject to greater control or guidance of their work. I find that, in reality, the claimant's role during the period of her engagement was identical to that of the employed creative producers during that period and both were controlled and managed by Ms Aslam in the same way.

39. Ms Aslam gave evidence that she did not direct the claimant's research methods or the order in which she progressed her work, or her professional communications. However, the claimant was specifically recruited because she had the skills to do those things. For someone engaged in the claimant's role and working at that level, it was not to be expected that she would require such direction. There was insufficient evidence that Ms Aslam treated the employed creative producers differently or that they had any less autonomy. They were all expected, along with the claimant, to originate proposals, research contributors, deal directly with publishers, agents and artis and propose formats and prepare indicative budgets.

40. On one occasion when the claimant indicated she intended to attend an external professional event in connection with her role, the respondent refused permission (pages 210 – 215) on the grounds that it was not sufficiently relevant to the work it expected the claimant to do.

Integration

41. The respondent accepted that it provided the claimant with the equipment necessary to do the role, including giving her office space, providing office supplies and a desktop computer. The claimant gave evidence that her gym access and parking identified her as 'staff', but I accepted the respondent's

evidence that that was merely because the university campus where the respondent was based used that terminology.

42. The claimant's email address was molly@bradfordlitfest.co.uk, she had access to Teams, Trello, Google Drive and Dropbox on which she was expected to carry out the respondent's work. I agreed with the claimant's submission that a prospective speaker she reached out to or any other person outside the respondent's organisation would not have been able to detect anything to distinguish the claimant from an employee of the respondent. The claimant was held out as being part of the respondent's 'team' throughout her engagement.

43. When the claimant's engagement ended, she was asked to hand over her work to colleagues, including employed colleagues, to inform her contacts of her departure and put an out-of-office message on her respondent's email account. The respondent retained control of the claimant's accounts, records, external relationships after the claimant left, removing the claimant's access and transferring the files held on her account to other staff within the respondent (pages 511 – 5120.

Working from home

44. There was a dispute about whether the respondent permitted the claimant to work from home. Pages 169 – 171 show the claimant referring on 9 March 2025 to her intention to work from home ("hoping you won't mind me working from home tomorrow"). Ms Aslam responded (page 170) "Its fine to wfh today… With the wfh policy please do bear in mind we normally use wfh for appointments or if you need to be at home for some other reason or if there's been a late night and its going to be a late start etc."

45. On 16 March 2026 the claimant again referred to a need to work from home, saying, 'I have everything to work from home' (page 175). Ms Aslam responded, "that's fine and thank you". On 28 March 2025 the claimant messaged Ms Aslam to say, "I plan to WFH on Monday and Tuesday next week" (page 180). The claimant gave evidence in cross examination that, when she failed to receive any response to that message, she and her colleague Ella emailed Ms Aslam (page 229) to say that, "We would like to address our working practices as freelancers… As freelancers, we expect a level of flexibility within our working methods, as supported by our contracts. Therefore, we would like to address the expectation that we are bound to the office during our working days. … We have all the tools needed to work effectively from home and would like this flexibility to start tomorrow". Ms Aslam replied by email dated 28 March 2025 (page 230) saying, "my only 2 days in the office next week are Monday and Tuesday so I will need you to be in so we can go through programme". On 28 April 2025 the claimant

messaged to say she was “going to work from home” so she did not bring her illness into the office. Ms Aslam responded “that’s fine”.

46. The respondent characterised these exchanges as the claimant notifying the respondent that she intended to work from home on particular days and exerting her right to determine where she worked. However, in my judgment, the exchanges are more nuanced than that. Ms Aslam started out referring the claimant to the respondent’s policy on working from home which applied to its employees. There is no reference to the working from home policy in the contract and that policy did not explicitly apply to freelancers. The claimant’s messages thereafter had the character of an employee seeking approval to work from home and Ms Aslam, in her replies, sounded like she was giving her approval or, in the case of the email at page 228, refusing permission. In my judgment, the claimant would not have sent the email at page 229 unless there was an expectation from the respondent that the claimant would work from the office and/or was subject to the working from home policy.

47. I accepted the claimant’s evidence that she and Ella were called into a meeting on 31 March 2025 to discuss the respondent’s expectations around working from home (referenced in the claimant’s email dated 3 April 2025 (page 247)) and that the claimant and her colleague were asked to follow employee procedure when confirming working from home days. The claimant sought approval in that email to work from home on 9 – 11 April 2026, and Emma Price (the respondent’s Marketing Manager) replied on 3 April 2026 to inform the office manager, Trudy Powell, that the request had been verbally approved. I find that the respondent controlled where the claimant worked and the claimant was expected to follow a process applicable to employees to request working from home.

48. Further, the email from Trudy Powell (page 260 - 261) reminded the claimant of the “internal process when working from home to state on Teams when you start and finish work and take breaks, so we all know who is working and when”. Ms Aslam in cross examination explained that the Teams check-in system was to, “ensure we aren’t getting in touch with people when they aren’t around… its courtesy to not badger you when you’re not around. The Teams check was so we know when someone’s not working”. However, on balance I find that the requirement to log in and out on Teams had the flavour of an employer/employee relationship because, as the claimant evidenced, it was requiring her to provide an ongoing record or her attendance and availability during the day (paragraph 54 of her witness statement). On one occasion the claimant felt the need to apologise because she had forgotten to log out (page 496).

The law

49. Section 230 ERA provides that:

    (1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

    (2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

    (3) In this Act "worker" (except in the phrases "shop worker" 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.

50. Section 83 EQA provides that:

    (2) "Employment" means—

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

51. In other words, an 'employee' serves the employer by putting his or her labour at their disposal in return for pay, some other financial benefit or benefit in kind. The contract governing this arrangement is a 'contract of service' or 'contract of employment'. A 'contractor' sells the end produce of their labour in the form of a service and the contract is a 'contract for services' and they are not an employee. If the contract for services expressly or impliedly guarantees the contractor's personal service and the relationship is not one of client or customer, they are likely to be a 'worker' under section 230(3) ERA.

52. Mr Justice MacKenna in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** 1968 1 All ER 433, QBD, reasoned that a contract of service/ employment exists if the following conditions are fulfilled:

    52.1. the individual agrees that, in consideration of a wage or other remuneration, he or she will provide his or her own work and skill in the performance of some service for the employer

    52.2. the individual agrees, expressly or impliedly, that in the performance of that service he or she will be subject to the other's control to a sufficient degree to make that other an employer

    52.3. the other provisions of the contract are consistent with its being a contract of service.

53. This three-part test was endorsed in later court decisions, including by the Supreme Court in **Autoclenz Ltd v Belcher and ors** 2011 ICR 1157, SC, and in **Commissioners for HM Revenue and Customs v Professional Game Match Officials Ltd** 2024 UKSC 29, SC (an income tax case).

54. In **Nethermere (St Neots) Ltd v Gardiner and anor** 1984 ICR 612, CA, it was judged that 'there must be an irreducible minimum of obligation on each side to create a contract of service'. That view was subsequently endorsed in the House of Lords in **Carmichael and anor v National Power plc** 1999 ICR 1226, HL, where Lord Irvine stated that a lack of obligation on one party to provide work and the other to accept work would result in 'an absence of that irreducible minimum of mutual obligation necessary to create a contract of service'.

55. Control requires the employer to direct what the employee does or does not do, although in the modern workplace may employees with advanced levels of skill and expertise may work with a high degree of autonomy. Provided the employer retains the practical right and ability to give instructions about what to do, how to prioritise it and whom they should report to there may be sufficient control to point to employee status.

56. The third stage of MacKenna J's test requires the Tribunal to examine all relevant factors, both consistent and inconsistent with employment, and to make an overall assessment as to whether a contract of employment exists. Factors can include the level of control and degree of mutuality of obligation required by the contract, financial considerations, the extent of the claimant's integration into the respondent's organisational structure and the labels the parties themselves attach. None of the factors is, in themselves, decisive and the Tribunal should focus on the picture painted by the accumulation of detail.

57. Even where a written document contains an 'entire agreement' clause, it is unusual for it to contain the entirety of the terms of the arrangement between the parties. In **Autoclenz** the Supreme Court famously accepted that employment contracts are an exception, requiring the relative bargaining power of the parties to be taken into account in deciding whether the written terms in truth represent what was agreed. The Supreme Court held that the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part.

58. A tribunal faced with an allegation that the written contract is a sham, must therefore consider whether the contract represents the true intentions or expectations of the parties, not only when it is signed but also at any later stage where the evidence suggests that the parties have expressly or impliedly varied the agreement. The question is not whether the parties realistically intended or envisaged that the contract terms would be performed

as written but what the actual legal obligations were on the parties. In **Uber BV and ors v Aslam and ors** 2021 ICR 657, SC the Supreme Court held that the written agreement is not even the starting point when assessing the nature of the parties' relationship. Instead, the Tribunal should focus on the intended scope of the statutory protection concerned to ensure it is extended to all those Parliament intended to benefit.

59. In **Ter-Berg v Simply Smile Manor House Ltd and ors** [2023] EAT 2, the EAT held that the Tribunal must apply the broad approach that **Autoclenz** describes, rather than the stricter approach that conventional contractual principles would allow. It is not the case that the question of whether a person is an employee has become purely one of status with no role at all for contract. But it would also be wrong for a tribunal to regard the written terms as having a primacy that constrains the tribunal from making findings as to what terms the parties truly intended to agree.

60. The respondent referred me to the cases of

60.1. **Ter-Berg v Malde** [2025] EAT 23, in which the EAT confirmed that, where the written terms reflect the parties' genuine and informed understanding, those terms and that understanding form part of the factual matrix and are not to be disregarded.

60.2. **Hall v Lorimer** [1994] 1 WLR 209 in which the taxpayer provided none of the expensive equipment required and provided only personal skill yet was held to be self employed.

60.3. **Byrne Brothers (Formwork) Ltd v Baird** [2002] ICR 667 in which the question of whether the respondent was a client or customer of a profession or business undertaking carried on by the claimant was held to be essentially a distinction between those whose dependence is essentially that of an employee and those with sufficient independent standing to look after themselves.

60.4. **Jivraj v Hashwani** [2011] UKSC 40, in which the Supreme Court held that the concept of employee is directed to those in a relationship of subordination.

60.5. **Halawi v WDFG UK Ltd** [2014] EWCA Civ 1387, in which the Court of Appeal upheld a finding of no employment where there was no subordination and no economic dependence.

61. As to the parties' own characterization of their relationship, Lord Justice Elias in **Stringfellow Restaurants Ltd v Quashie** 2013 IRLR 99, CA, stated: "It is trite law that the parties cannot by agreement fix the status of their relationship: that is an objective matter to be determined by an assessment of

all the relevant facts. But it is legitimate for a court to have regard to the way in which the parties have chosen to categorize the relationship, and in a case where the position is uncertain, it can be decisive." The parties' intentions with regard to the status of the working relationship in law is a relevant factor, but the Tribunal must always look to the substance of the matter. The fact that an individual asks to be treated as self employed for tax or other reasons does not prevent them claiming later that the relationship was in fact one of employment all along for the purposes of asserting employment rights (**Smith v Goodmayes Insulations Ltd** EAT 55/97).

62. In **Young and Woods Ltd v West** 1980 IRLR 201, CA, the Court of Appeal held that, although the claimant asked to be treated as self employed, the reality was that he was treated no differently from other employees carrying out the same job, save that he was not given holiday entitlement or sick pay and was not subject to the respondent's disciplinary procedure. He was always an employee despite the label used by the parties.

Determinations

63. I find that the wording in the written agreement identifying the claimant as an independent contractor or freelancer did not reflect the reality of the arrangement between the parties from the outset. The 'irreducible minimum' threshold for a contract of service is: mutuality of obligation, personal performance and control. I find that those features were present in the agreement between the claimant and the respondent from the commencement of the claimant's engagement, despite the written agreement stating otherwise.

Mutuality of obligation

64. Despite the unambiguous wording of the written agreement to the contrary, I find that the reality of the contractual agreement between the parties was that there was a legal obligation on the claimant to do the work and the respondent to provide the work during the fixed term of the written agreement. The contract was for a defined term and there was no obligation after the end of that term to offer further work or for the claimant to accept work after the end of the fixed term.

65. The respondent submitted that the fixed term nature of the contract was indicative of independent contractor status. However, while the fact that the arrangement was not a permanent or open-ended engagement is relevant, that fact, in and of itself, is not particularly persuasive, in my judgment, given that contracts of employment can also be for a fixed term.

Personal service

66. The burden of proof is on the claimant to show that she was contracted to do the work personally. The respondent accepted that the contract did not confer an unrestricted right of substitution, but it submitted that substitution was not forbidden, merely never sought and so never tested. I found on the balance of probabilities on the evidence, in particular the onerous permissions, checks and training that a substitute would have required, that the respondent would not have allowed the claimant to substitute anyone else. Moreover, I find that the omission of a substitution clause from the contract was, on balance, likely to have been a deliberate omission to ensure that it was a contract to do the work personally, given the detailed and precise wording of the remainder of that contract.

67. Ms Aslam's evidence that the claimant was engaged for her personal skill and experience also supported that conclusion. The case law is clear that engaging someone for their personal skill and experience does not prevent a conclusion that there is no requirement for personal service. However in this case, the claimant's personal skill and experience was, in my judgment, highly relevant. A successful contractor might be chosen for being the cheapest and/or other factors might be taken into account, but in this case the claimant was identified as on of the two "best candidates" specifically because she, personally, was suited to the respondent needs. I find that there was a requirement for personal service by the claimant.

68. In addition, and separately, I find that, while the written agreement did not explicitly prevent the claimant doing other work (pages 260 – 265), the reality of the arrangement was that the claimant could not do other work and the respondent expected her to devote her full time, attention and skill to the respondent's work.

Control

69. I find that the claimant has shown that she was subject to exactly the same level of control as the creative producers on her team who were employees of the respondent. Taking account of the professional standing of the role and the skills and experience the respondent required, the fact that the claimant had a large degree of autonomy in how to carry out the work did not, in my judgment, amount to a lack of control. Moreover, the claimant had no more autonomy than the employed creative producers: the respondent retained control of the decision making and required the claimant and employed creative producers to seek authorisation at a number of points in the process, to a degree which led to the claimant trying to negotiate payment for the significant overtime she envisaged having to undertake to complete the work. The reality of the arrangement was that the claimant was expected to liaise with and report to Ms Aslam regarding the day-to-day performance of the

work, comply with instructions from the respondent, pick up work from predecessors, carry out work outside the original remit, undertake such other duties required by the respondent (pages 84 – 85) and the respondent could reject her work and refuse permission for her to attend an event (pages 210 – 215).

70. Similarly, while there was some flexibility in how the claimant deployed the hours she was required to work, that was not beyond the type of flexibility that an employee of the respondent might or did exercise. There was insufficient evidence that employees exercised less flexibility and there were clearly limits on the flexibility open to the claimant. She was expected to work 40 hours per week within certain parameters. If she worked particularly efficiently and got the work done in less time, she was not entitled to work fewer than 40 hours per week. The respondent required the claimant to log in and out on Teams to show when she was working. Although no disciplinary action was described, it appears that, had the claimant worked fewer than 40 hours per week the respondent would have sanctioned her.

71. Although Ms Aslam gave evidence that the claimant was ‘at liberty to decline’ to attend the office, I find that, in reality there was no such flexibility. The claimant was required to generally work at the office in line with the employee working from home policy. Although the respondent submitted that employees requested working from home formally, by email and with notice, the reality was that the claimant too was expected to ask for permission and sought agreement to do so. The messages in the bundle showed the claimant seeking permission and Ms Aslam using words to indicate that she approved or, in the case of the request on 28 March 2025, did not approve. When Ms Aslam did not approve the claimant’s request, the claimant was expected to attend the office. Although the claimant tried to assert a right to work from home, consistent with being a freelancer, the respondent resisted that. The claimant has shown that she was subject to a high level of control of the day to day performance of her role by the respondent.

Terms of the written agreement

72. I find that the ‘entire agreement’ clause in the written agreement did not reflect the reality that the contractual agreement between the parties included other and different terms, including those relating to time off in lieu, overtime payment, risk and profit and working from home discussed above in the findings of fact. I also agreed with the claimant’s submission (paragraph 27 of her witness statement) that, in any event, many of the terms of the written agreement, read as a whole, had the flavour of an employment relationship (for example the restrictions on when the claimant would work and how many hours would be paid).

73. The respondent submitted that the claimant's case rested in part on administrative untidiness in the respondent's documents and the respondent accepted that its own documents, including the role advert, were 'administratively untidy' and invited the Tribunal not to place weight on isolated words or drafting errors when the substance was plainly one of a freelance engagement. I agreed that undue weight should not be placed on isolated words or drafting errors. However, in my judgment the terminology used in the written agreement, while not in itself creating or contributing to the creation of a contract of employment, was illustrative of the blurring of lines in respect of the claimant's status in reality. The respondent itself treated the claimant as an employee, in that it exercised extensive control over her work, fully integrated her into the organisation, made her subject to employee policies with regard to working from home, exercised its superior bargaining power in respect of wages, recruited the claimant because she was the best candidate for the job, and treated her in most respects the same as a creative producer who was employed permanently. The only exceptions were the requirement for her to invoice, the tax and national insurance liability, the lack of sick pay, holiday or pension, disciplinary arrangements, the fixed term nature of her contract and the terminology of the contract of engagement. The discrepancies in terminology in the written agreement reflected the reality that the label of freelancer did not accurately capture the reality of the relationship.

Self-identification

74. The claimant labelled herself a freelance contractor and sought to assert the rights associated with that status throughout and after her engagement. However, I find above that the claimant has shown that the respondent refused to engage with her in a manner consistent with that status. While the way the claimant chose to categorise the relationship is relevant and can be decisive where the position is uncertain (**Quashie**) I find that the claimant has shown that, looking behind the substance of the labels, the reality of the arrangement was that the label given was not accurate. As in **West** the reality was that the claimant was treated no differently from other employees carrying out the same job, save for payment arrangements, certain benefits, and disciplinary arrangements. The label employed by the parties did not reflect reality.

In business on own account/subordination

75. The respondent submitted that the respondent was a client or customer of a profession or business undertaking carried on by the claimant and was not therefore either an employee or a worker under section 230 ERA. The respondent identified the claimant's reference to her existing market day rate and fee under a previous freelance contract, the tax and national insurance arrangements and the fact that she invoiced from a business address and

sought to apply interest for the late payment of commercial debts. While I accepted that those were factors suggestive of an independent contractor, the facts of what happened between the parties put these facts in a different light. Although the claimant made reference to an existing market day rate and fee under a previous freelance contract, the reality was that the respondent offered the work at a particular rate, based on a pro rata salary for the employed role. While the claimant was able to negotiate an increase to that rate for part of the duration of the contract, that, in my judgment, was no different to a successful candidate for an employed role negotiating a higher wage. The claimant's attempt to impose interest for the late payment of commercial debts, in reliance on her 'freelance status', was not taken seriously by the respondent nor did she receive the amounts she invoiced for, because the respondent did not accept that she was owed those amounts and dictated the terms of payment. In my judgment, this evidenced the respondent's superior bargaining position: Although the claimant was trying to use the language of a commercial dispute, her efforts failed. The respondent agreed to pay her overtime, despite the terms of the written agreement, at the rate of pay the respondent set. In my judgment the respondent was not negotiating with the claimant as a commercial partner, but rather treating her like an employee. I find that the claimant has shown that she did not have sufficient independent standing in the context of this relationship to define the respondent as her client or customer.

76. The claimant has shown that her level of dependence on the respondent and subordination was that of an employee. She was economically dependent on the respondent for the duration of the fixed term. She was not in business on her own account and could not work elsewhere. She did not stand to profit from good management of the work, did not receive additional profit if events sold well and did not bear any loss if the festival was not successful.

77. I find that the claimant has shown that she was fully integrated into the respondent's business, working as part of the respondent's 'team', attending team meetings including internal programming and organisational meetings, using the respondent's systems, templates, workflows and permissions, picking up work from employed creative producers when staffing changed and representing the respondent to external agents. To everyone outside the organisation there would have been no indication that she was engaged on a freelance basis rather than as an employee and she was held out as a member of the respondent's 'team', suggesting that she was an employee. I agreed with the claimant's submissions that a comparison with the employed creative producer role demonstrated that professional judgment, direct external contact, variable peak-time hours and lack of staff management responsibility were not features which separated the claimant's role from that of an employed creative producer. The core programme working and management framework substantially overlapped. The differences were minor and limited to the payment arrangements, tax, national insurance and

employee benefits, disciplinary arrangements and the length of term. I find that the claimant has shown that she was in a position of subordination (**Jirwani)** and was not in business on her own account. The respondent was not a client or customer of a profession or business carried out by the claimant (section 230(3)(a) ERA).

78. The respondent sought to distinguish **Uber** on the basis that the claimants in that case could not negotiate remuneration, could not build a client base, were monitored by an automated ratings system with penalties and were prevented from communicating with passengers, none of which applied to the claimant. However, those were features of the type of work in **Uber**, which was a claim for worker status based on a tripartite relationship. The factual matrix was very different in this case. The claimant's work was of an entirely different type and there was no tripartite relationship. Nevertheless, I find that the general principles of **Uber** apply: the Tribunal should focus on the intended scope of the statutory protection concerned to ensure it is extended to all those Parliament intended to benefit. In this case, the claimant's position was that of a subordinate. Her negotiation of an increase to the day rate for part of the duration of the contract before commencing the engagement was not the same as setting a fee, tendering for a contract or negotiating a fee at the outset. It did not distinguish her from an employee who negotiates a pay increase before signing a contract of employment. The claimant's proposal for increased payment for additional work was rejected outright, although the respondent did agree to pay her for overtime, for which its employees would also have received compensation albeit by means of time off in lieu rather than payment. Time off in lieu was not an option for the claimant because of the fixed term nature of her engagement. Additionally, although the claimant communicated directly with agents and publishers and exercised her own professional judgement to an extent, she was subject to rigorous approval processes and was not entitled to engage speakers without having her decisions 'green lit' by Ms Aslam. She was not able to build her own client base. While there was no scoring or penalty scheme, had the claimant done something the respondent disapproved of, it was clear from the tenor of Ms Aslam's emails and the other emails between the parties in the bundle that the claimant would have been sanctioned. I find that **Uber** is not distinguishable for the reasons the respondent identified.

Conclusion – employee for section 230(1) ERA

79. The 'irreducible minimum' threshold for a contract of service is mutuality of obligation, personal performance and control. I find that the claimant has shown that those factors all existed in the contractual arrangement between her and the respondent. The respondent submitted that the engagement was for a defined commission, not a permanent or year-round appointment and there was no obligation to offer or accept work beyond 6 July 2025. The respondent also submitted that it has always employed permanent creative

producers and engaged freelancers to meet the additional demands of the festival period. I am not persuaded that either of those facts, while relevant, prevented the claimant's engagement being one of employment. In my judgment the level of control exerted by the respondent over the claimant's work and the other features of the contractual arrangement, including her integration into the respondent's business, the level of similarity between her role and that of the employee creative producers, and the different bargaining power evidenced by the respondent's refusal to allow her to bill at the rate she sought for the additional work, were all indicative of a contract of service, rather than a contract for services. In my judgment the tax, national insurance and payment arrangements, the lack of pension and other benefits, and the wording of the written agreement, while indicative of independent contractor status, are outweighed by the factors detailed above that, in reality this was a contract of service. Although it was the intention of both parties at the outset of the engagement that the claimant would be freelance, and the claimant herself sought to assert her 'rights' as a freelancer, the claimant has discharged the burden of showing that the overriding feature of the relationship was that it was a contract of service and within the intended scope of the statutory protections of the Employment Rights Act 1996.

80. I find that the claimant was an employee of the respondent on a fixed term contract, within section 230(1) ERA.

Conclusion – worker for section 230(3) ERA

81. Separately, I find that the claimant has shown that there was a requirement on her to perform the work personally and that the respondent was not a client or customer of a profession or business undertaking carried out by the claimant. There was no unrestricted right of substitution and the claimant was recruited to the role specifically for her skills and experience. The respondent said substitution was not forbidden but was never tried and tested and that, had the claimant wanted to substitute someone else, there would have been a discussion about experience, confidentiality, data protection, safeguarding (including DBS checks) and access to the respondent's systems. That submission was not plausible, in my judgment, given the respondent's requirement for continuity, and the onerous constraints put on potential substitution. In my judgment, the reality of the arrangement was that the respondent expected the claimant to do the work and no one else.

82. The claimant was not in business on her own account but was in a subordinate position to the respondent throughout the relationship. Although the intention of both parties at the outset was that she would be freelance, and the claimant sought to assert that status during the engagement, the reality of the arrangement was that she did not have the freedom to behave as a contractor would behave. Instead she was expected to work fixed hours, during a fixed window, to comply with the working from home policy, to do the

work in a particular way and was not able to set her own rates for the work beyond negotiating the payment of overtime instead of time off in lieu. She did not bear any risk (other than NI, tax liabilities and the requirement to have her own insurance) and she did not stand to profit from more efficient working practices (either in increased pay or being required to work fewer hours). The respondent did not expressly prohibit work for other people, save where there was a conflict of interest, but the reality was that the claimant did not work for others and nor, I find, did the respondent expect her to. It was clear that this was a full-time engagement and the claimant was expected to dedicate herself to the respondent's work. The respondent submitted that the claimant's conduct was that of a person in business, pricing her own work, rejecting the counterparty's figure and applying commercial debts statute to her invoices. I find that the claimant tried to do those things, but the respondent did not respond like a client or customer. They rejected the claimant's attempt to price her own work, agreeing only to a small pay increase for part of the duration of the engagement. They agreed to payment of overtime instead of time off in lieu, but refused to countenance the amounts the claimant identified and refused to pay the claimant's invoices which applied interest. The respondent behaved as an employer and, given the different power dynamics, the claimant had no choice but to either continue working on the terms the respondent dictated or walk away. She continued working on the respondent's terms, and so behaved as a worker, rather than an independent contractor in dispute with a client or customer.

83. I find that the claimant was a worker within the terms of section 230(3) ERA.

Conclusion – in employment for section 83(2)(a) EQA

84. Section 83(2)(a) EQA includes employment under a contract personally to do work. This is the widest of the three questions and, for the reasons set out in my determinations above, I find that the relationship was one of subordination and dependency. The claimant was in employment within section 83 EQA.

Approved by:

Employment Judge Bright

11 September 2026