EMPLOYMENT TRIBUNALS

Claimant Julius Weithers

Respondent Gravity Nightclub

Heard at: Bristol **On**: 4-5 February 2019

Chairman: Employment Judge M Ford QC

Representation

For the Claimant: Mr Bheemah, counsel
For the Respondent: Mr Self, counsel

JUDGMENT AT PRELIMINARY HEARING

The judgment of the Tribunal is as follows:

1. The Claimant was not in the employment of the Respondent within the meaning of s.83 of the Equality Act 2010 and nor was he a contract worker within the meaning of s.41 of the Equality Act 2010.

2. The Claimant was not a worker within the meaning of regulation 2 of the Working Time Regulations 1998.

Consequently, the claims are dismissed.

REASONS

Background

1. In a claim form received on 18 May 2018 the Claimant complained of direct race discrimination, indirect race discrimination and harassment contrary to the Equality Act 2010 ("EqA"), in a claim brought against "Gravity Nightclub". He also claimed unpaid holiday pay under the Working Time Regulations 1998 ("WTR").

2. In its response, the Respondent denied the claims but contended that the matter should be listed for a preliminary hearing ("PH") to determine if the

Claimant was an employee within the meaning of the EqA or a worker for the purpose of WTR.

3. A telephone PH took place on 27 July 2018 before Employment Judge Oliver. At that hearing EJ Oliver listed the case for a PH to determine whether the Claimant was an employee, worker, contract worker or employed for the purpose of the EqA. The issues to be addressed also included who was the correct Respondent(s), and whether additional Respondents should be added.

4. The Tribunal heard evidence from the Claimant and James Treherne, a director of the various companies which have used the trading name Gravity Nightclub from time to time. Both witnesses presented written witness statements and were cross-examined. There was an agreed bundle of documents.

5. Both counsel provided written submissions and made oral submissions, which were of great assistance in clarifying what was in dispute and what was not. At the hearing, it was made clear that written reasons would be requested – hence these reasons.

Facts

6. I find the following facts on the balance of probabilities.

7. The Claimant is a well-known professional DJ who works under the name of DJ C-SAR. From 2013 he worked at a nightclub called Pryzm. While there he was in business as a sole trader. The Tribunal saw a copy of his accounts for 2016-17, showing his various expenses.

8. In about February 2017 the Claimant's accountants advised him to operate by means of a limited company in order to reduce his tax bill. The Claimant set up the company NV Nite Vision Limited ("NV") in March 2017. He held both the shares and was the director.

9. The incorporation did not affect the Claimant's work with Pryzm but it did affect the method of payment. From then on, when he received money from his work, via cash or cards, it was paid into NV's bank account. As to how money reached the Claimant as an individual, in cross-examination he said he was paid what he described as a "notional" salary of £600 a month from NV's account on which tax and National Insurance contributions (NICs) were deducted under PAYE, adding that the money was not in fact paid to him (I assume it was all part of reducing tax liabilities, whether paid by him or NV). He later produced a wage slip for September 2018 on which he was described as "employee" and under which he was paid £702. In fact no deductions were made because the pay was set, it appeared, at the maximum level for not paying income tax or NICs. Other money was paid to him, he thought, as dividends. He had no written contract of employment with the company. There was no other evidence about the contractual relationship between the Claimant and NV.

10. From 3 May 2017 the Claimant took out Employer's Liability Insurance, in his own name, though he referred to "trading as NV". This was insurance for those who worked for NV.

11. The Respondent ("Gravity") is no more than a trading name. It is a night club in Bristol. The only company which might exist at the time when the agreement with the Claimant was signed, was called Hooch Trading Limited. It is no longer trading. Another company, Hardback Trading Limited, was only incorporated later, on 3 August 2017. Mr Treherne was a director of both companies.

12. The individuals who appear to be in charge of Gravity are Mr James Treherne, who was a director of Hooch and other companies, and his business partner, Jim Beedham.

13. In about July 2017 the Claimant entered into a contract with what is described as "Gravity Night Club". Mr Beedham and Mr Treherne approached the Claimant because they knew of his reputation and wanted him to work at Gravity, bringing in customers who would then spend money at the club. The precise detail of what happened is not clear; the evidence of neither witness was satisfactory. Both agree, however, that a written contract was signed on about 4 July 2017 at a pub called the Brass Pig by Mr Beedham and Mr Treherne, on the one hand, and Mr Weithers, said to be signing for NV. The dispute is about which written contract was signed (there were two in the bundle).

14. It is not in dispute that on 28 June 2017 the Claimant sent to Mr Beedham and Mr Treherne an e-mail to which was attached (i) a "Proposal", described as a Schedule to the contract and (ii) a document produced by the Claimant described as a "Fixed Term Employment Contract for NV" ("Contract A"). That contract referred to NV as the "Employer" and Gravity as the "Employee". It was for fixed-term expiring on 27 January 2018 but with a provision for continuing thereafter if targets were met. It seems the Claimant used a contract from the internet as a means of drafting it; he had no legal advice on it.

15. There was a separate contract in the bundle ("Contract B"). It was very similar to Contract A, save that (i) on it the NV was described as the "Employee" and Gravity as the "Employer"; (ii) it was not for a fixed term; (iii) it included a new clause, Article 7.3, under which the Employee – that is, NV - retained copyright in videos or photos taken at Gravity; and (iv) consistent with the first change, in most clauses the terms "Employer and "Employee" were switched from the version in Contract A (but not all – probably by mistake) .

16. According to the Claimant, he met Mr Beedham and Mr Treherne at the Brass Pig on 20 June, later sent them the e-mail, then changed the contract after discussions with his girlfriend about some of the terminology, and then signed the different Contract B at a second meeting on the Brass Pig on 4 July. However, this evidence was different from his witness statement and claim form, where he referred to only one meeting. Nor did the signed page, which referred to Gravity as the "Employees" and NV as the "Employer", fit with the Contract B, in which Gravity is said to be the "Employer" on the title page (though the words were not switched in one or two other clauses as well so that perhaps little can be inferred from this).

17. According to Mr Treherne, on the other hand, there was one meeting at the Brass Pig on 4 July which was the first time he had personally met the Claimant (though he said the Claimant had met Darren Marks, the Bristol Operations Manager beforehand), and he signed the contract there after quickly scanning it. But he could not recollect anything about whether he had received the e-mail of 28 July before the meeting, even though it is accepted was sent and received. Nor could he explain how the Claimant would be e-mailing him and Mr Beedham, referring to them as "Jim & Jim" if he had never met them. All he was emphatic about was that the contract he signed was for a fixed term, in accordance with Contract A.

18. With hesitation, I consider the Claimant is probably right on this matter. If Contract B was meant to be a deliberate fabrication, it is odd that it included mistakes (such as not switching the names of "Employer" and "Employee" in every clause: see e.g. Article 1, Article 5.1 and he signed page), and one would expect a fabrication to show more clearly that NV was the employee, if that was its purpose. It appears from the e-mail of 28 June that the Claimant may well have already Mr Treherne and Mr Beedham, since it was worded as if they had had a discussion. It would be odd to send a contract out of the blue to someone the Claimant had never met. The Claimant, too, had an explanation for changing the terminology in Article 7.3, because he wanted to keep copyright in the photographs. Finally, given how little attention Mr Treherne seems to have paid to the detail of the contract, I doubt he could be confident about the correct one.

19. I therefore consider the parties probably signed Contract B (though the differences in terms is not that significant) on about 4 July. It was drafted by the Claimant – unusual for an employment contract in which NV was said to be the "Employee". As to the detail:

    19.1. Article 1 said that the "Employer" – presumably a mistake since Gravity was now defined as the "Employer" – engages in providing services to "Gravity" commencing 19 July 2017.

    19.2. By Article 2, it was said Gravity "employs" NV "in the capacity of Marketing and Promotion Services" in accordance with Schedule 1 (meaning the Proposal). Gravity was to perform its duties "in function of targets set jointly".

    19.3. Article 2 said working hours were as stipulated in Schedule 1, meaning the Proposal (in fact the Proposal said nothing about them).

    19.4. Under Article 2, NV was to be paid 100% of door revenues, and it was said that NV was responsible for its own tax and NICs "arising in respect of fees rendered".

    19.5. Article 5.1 required the "Employee" – NV – "at all times faithfully, industriously, and to the best of his ability, experience and talent, perform all duties that may be required of and from him pursuant to the express and implicit terms thereof". That clause, however, appeared to be a mistake, since it was one where the original draft in Contract A also referred to "Employee" – meaning Gravity - and

where the later clauses imposed obligations on the Employer (the Claimant explained in evidence that he meant to switch all the references to "Employer" to "Employee" in Contract B, but it seems he missed some).

19.6. Consistent with that interpretation, Article 5.2 went on to impose various rights on the "Employee" (NV). Thus NV could terminate the contract if the "Employer" refused to abide by advice given by NV; and the Employee, NV, could terminate the contract in the event of gross or serious misconduct by the Employer (Gravity) – a reversal of the normal position in contracts of employment.

19.7. Article 6 imposed obligations of confidence on Gravity, prevented it from competing, and said that "non-adherence to these obligations shall be construed as serious misconduct and shall constitute grounds for immediate dismissal of 'Gravity' without notice or compensation" – again in sharp contrast to a normal contract of employment.

19.8. Article 7 imposed various obligations on Gravity, including to protect the personal interests of the "Employee" (NV).

19.9. The document was signed on the last page by Mr Beedham and Mr Treherne for "Gravity" and by the Claimant for NV.

20. The Proposal, said to be Schedule 1 to the Contract, again produced by the Claimant for NV, described the brand "Skye" created by the Claimant. It outlined the promotion and marketing to be done by NV, described as one of the "strongest events and promotional teams based in Bristol and the southwest", and said to comprise "5-10 influential people". Under the heading "Entertainment" it said the night would comprise of "the finest NV resident DJs and acts". Under "Finance" it was said that NV's "aim was to continue to build a long-term relationship with you that is mutually beneficial for both parties", and said NV would bear the costs of promotional materials and artwork. Pricing of tickets was fixed, too, though it was said that this would always be discussed with management. On a page entitled "Terms & Conditions", NV was entitled to "100% of door revenue"; it would undertake all marketing and advertising of Gravity; and "NV will be treated as part of the management team and not as an outside entity". The Proposal said nothing about the hours of work, any personal work by the Claimant, or any duties of the Claimant.

21. At the Brass Pig, when the contract was signed, my impression is that Mr Beedham and Treherne were keen to get the Claimant to work for Gravity, and he was happy to get the work at Gravity. I do not consider there was any discussion about the duties he would do or anything else, so that nothing was agreed about e.g. hours or whether the Claimant must attend personally. Mr Beedham and Mr Treherne never mentioned Hooch when the contract was signed, or said they were acting for any company.

22. The first night when the Claimant worked at Gravity was the 27 July. Prior to that, Mel Atkins (a freelancer engaged by NV) made suggestions about changing Gravity's website. The event plan for the opening Saturday, sent

by the Claimant, listed various NV freelancers would be working there, describing the Claimant as "director" and listing two DJs. During this time, the Claimant carried on working at other clubs.

23. I should describe briefly what in fact happened during the period while the Claimant/NV was running Gravity:

    23.1. The Claimant did marketing and promotion of the nights at Gravity. He paid for this mostly out of the NV account.

    23.2. Various DJs other than the Claimant worked at Gravity on Saturday, engaged and paid by him, probably from NV's account. In addition, the Claimant engaged various other freelancers to work at Gravity, paid by NV. The Claimant did, however, turn up every Saturday night to supervise the NV people, as well as working as a DJ when no other DJ was engaged.

    23.3. The door receipts were collected and kept by NV, in accordance with the Proposal. The Claimant fixed the door fee at £6 for the opening night, and thereafter could fix the fee so long as it was no more than £8 before midnight. After midnight, the price could be increased by NV, though there was an expectation the matter would be discussed with Mr Treherne or others if the charges were too high.

    23.4. At some stage there was probably an agreement that NV or the Claimant would collect £40 for each table sold at Gravity on Saturdays. This was paid to the Claimant by Gravity – I presume Mr Treherne or Mr Beedham, though I heard no evidence on this.

    23.5. In relation to dress, there was an expectation that the Claimant would wear smart casual clothes – but no more than that.

    23.6. There were no fixed hours for the Claimant or NV to work. In practice, however, arrangements were made for occasional meetings between the Claimant and those at Gravity, to discuss how the nights were going. They were arranged at times that were mutually convenient.

    23.7. By the same token, both the Claimant and management at Gravity exchanged e-mails about suggestions and matters they needed or wanted in connection with the Saturday nights at the club.

24. The relationship between the Claimant and Gravity began to worsen in late 2017; the details of this are not matters for this PH but I record them because some of it was relied on in submissions. In December 2017 an exchange of messages took place between the Claimant and Mr Darren Marks, the Area Manager at Gravity, in which Mr Marks included some photographs of white club-goers (mostly female0 said that the "image we both need is of the photos above. happy white people. Sad but true". The Claimant unsurprisingly took strong objection to this and was upset by it, as recorded in the full conversation.

25. After some issues with the police, on 18 January 2018 the Claimant signed an "External Promoter License [sic] Acknowledgement", making clear he as third party agreed to comply with the premise licence conditions and had limited liability insurance.

26. On 20 January, management at Gravity e-mailed the Claimant to say that there was to be "Strictly no urban, grime, bashment, jungle, dancehall, raga music to be played at Gravity" on Saturdays, and setting out various other matters which had apparently been discussed on the phone. The Claimant objected strongly to this in an e-mail in reply on the same night. Mr Treherne accepted this was an instruction, but said it was issued because of what had been agreed in the Proposal about the type of music, which said the proposed acts would not include "grime artists".

27. On 24 January, Mr Treherne e-mailed the Claimant terminating the Saturday nights at Gravity "with immediate effect".

Legal principles

28. The legal issues here are far from straightforward, but the area of dispute considerably narrowed in the course of submissions.

29. At the outset of the hearing, Mr Bheemah explained that the Claimant was not contending he had a contract of employment with the Respondent (whoever that should be) for the purpose of s.83 EqA.

30. "**Employment under a contract**". The first issue, therefore, was whether the Claimant was "employed under…a contract personally to do work" within the meaning of s.83 EqA. Both counsel agreed that this term should be read in accordance with the meaning of "worker" in EU law following the judgment of the Supreme Court in ***Hashwani v Jivraj*** [2011] ICR 1004 (This must also be consequence of anti-discrimination being a fundamental principle of EU law which has direct horizontal effect, meaning that anyone who is a "worker" as a matter of EU law must be able to bring a claim against his or her employer).

31. Both counsel further agreed that the relevant criteria for this purpose were set out in Case C-256/01, ***Allonby v Accrington*** [2004] ICR 1328. The definition of a worker, as set out in paragraph 67 of ***Allonby***, is a "person who, for a certain period of time, performs services for and under the direction of another in return for which he receives remuneration". Such persons are contrasted with those "not in a relationship of subordination with the person who receives the services" (paragraph 68). The question is answered based on "all factors and circumstances by which the relationship between the parties is characterized" (***Allonby***, paragraph 68). Applying that test, Lord Clarke in ***Jivraj*** held that an arbitrator was not in a relationship of subordination and so was not a worker (paragraph 40).

32. For this purpose, "remuneration" includes wage, salary "and any other consideration…which the worker receives directly or indirectly in respect of his employment, from his employer" (***Allonby***, paragraph 68).

33. In paragraph 70 of ***Allonby*** the Court of Justice stated that if a person is a worker as set out above, "the nature of his legal relationship with the other

party to the employment relationship is of no consequence" (see too paragraph 71). In that light, Mr Self accepted that the Claimant could be a worker as a matter of EU law (and hence domestic law) irrespective of the fact that the engagement here took place via the means of a contract with NV. He accepted that I should look at the reality of the relationship between the Claimant and Gravity, to see if the criteria in ***Allonby*** were met, even though strictly NV was interposed between them. There is already some support for this approach in domestic case-law: see ***Halawi v WDGF*** [2015] IRLR 50 per Arden LJ at paragraph 4, where she recognized that EU law could be applied even in a "complex situation" involving a service company. In light of Mr Self's acceptance of the approach, which chimed Mr Bheemah's submissions, I should therefore consider the application of the criteria in ***Allonby*** to the relationship between the Claimant and Gravity.

34. **Contract worker – s.41 EqA**. There also turned out to be substantial agreement on the correct legal approach to the contract worker question. Mr Bheemah relied on ***MHC v Tansell*** [2000] ICR 789 as authority for showing that s.41 EqA could apply to an arrangement where a director/shareholder was supplied via his company to work for a "principal". Though that case was based on s.4 of the Disability Discrimination Act 1995, s.41 of the EqA uses similar language and neither counsel suggested it had a narrower meaning. If anything the additional words in s.41(5)(b) EqA appear to endorse the judgment in ***Tansell***, because they make clear that there is no need of a direct contract between the "person" supplying the worker and the "principal". I accept Mr Bheemah's submission on this aspect.

35. Mr Self, too, accepted that s.41(5) could apply on the basis that NV supplied the Claimant in furtherance of a contract with Gravity (or more strictly, the Respondents who should be treated as Gravity) and that Gravity made work available for the Claimant, meaning it was potentially the principal. I think that concession was rightly made in light of the generous interpretation given to discrimination statutes, as affirmed in ***Tansell*** (per Mummery LJ at 798C-F).Nonetheless, Mr Self contested the application of s.41, contending that the Claimant was not "employed by another person" within the meaning of s.41(5)(a), by which he submitted he was not "employed by" NV. This was not in issue in ***Tansell*** because there was no dispute that Mr Tansell was an employee of his service company.

36. It follows that the only issue in dispute was s.41(5)(a), and whether in fact the Claimant was "employed" by NV. The term "employed" in s.41(5)(a) must bear the wide meaning of employment in s.83 EqA, as embracing both a contract of employment or a contract personally to do work. Mr Bheemah rightly conceded there was no evidence to show that the Claimant was subordinate to NV, so that he could not argue the Claimant met the ***Allonby*** criteria in relation to it. As he accepted, the relevant question was, therefore, whether he had a "contract of employment" with NV in accordance with the relevant case-law on directors and their companies: see, on this, ***Secretary of State for Business v Neufeld*** [2009] ICR 1183.

37. **Worker under regulation 2 WTR**. It also transpired there was no significant dispute about the legal test for "worker" for the purpose of regulation 2 of WTR. That definition requires a contract by which an "individual" undertakes to do or perform personally any work or services. Because the Claimant did

not have a contract with Gravity – the contract was between NV and Gravity – on its face the domestic definition would not apply (and nor did that contract place any obligations on the Claimant as an individual). But regulation 2 is also underpinned by EU law, the right to annual leave has recently be held to be a fundamental principle of EU social law with horizontal effect, and in that light both counsel accepted that the criteria in ***Allonby*** were equally applicable here.

Conclusions

38. In light of the law, my conclusions are as follows.

39. **Employment under in EqA**. The central question is whether the test of ***Allonby*** is met. I do not accept Mr Beemah's argument that, in analyzing whether the Claimant met the "worker" question, I should simply look at what he in fact did on a day-to-day basis. Contract B sets out the terms agreed to govern the relationship between NV and Gravity, and those terms must be highly relevant to how that relationship was expected to operate. This is especially so because they were drawn up, not by Gravity, but by the Claimant. No doubt what happened on the ground may be examined as part of the overall circumstances referred to in ***Allonby***; but, in circumstances where it is not contended that the contract was imposed on a party with weaker bargaining power, the terms of the agreement are highly relevant to what was the relationship – it shows how the Claimant intended and expected the relationship to operate.

40. The first element is whether the Claimant performed services under the direction of Gravity or, put the other way, was not in a relationship of subordination to it. I do not consider the Claimant meets this criterion.

41. Contract B, the one entered into, tends to show, if anything, that Gravity was subject to direction by NV, not the other way round. Mr Bheemah did not rely on any clauses in that Contract as showing that the Claimant was performing services under the direction of Gravity. He did not rely on Article 5.1, presumably because that Article was one where "Employer" and "Employee" were by mistake left the wrong way round and not switched when the new draft was issued. In any case, the other Articles tend to show that it was NV, the "Employee", who possessed the power to direct Gravity: see Article 5.2C, 5.2D, 5.2E. The contract is notable for its reversal of the normal relationship between employer and employee.

42. The Proposal, which was also part of the contract, equally says nothing to suggest that the Claimant would be under the direction of Gravity. The Claimant is not mentioned at all; it only suggests work will be done by NV; it indicates that the organization of Saturday nights is very much a matter for NV; and the overall impression is of two parties "working together" (see under the heading "Entertainment"), rather than of Gravity directing NV or the Claimant. Supporting that this was a commercial relationship between partners or equals is the fact that NV engaged free-lancers on the nights, in respect of whom it took out insurance.

43. Faced with these difficulties, Mr Bheemah instead relied on several factual matters as showing direction or subordination. One was the limit on fees from door tickets. But this does not demonstrate, in my view, that the

Claimant was subject to direction in the performance of services. It is no different from a commercial arrangement between equals, and in any case NV or the Claimant had considerable discretion in charging door prices, especially after midnight (even if these would be discussed) – inconsistent with subordination.

44. The second matter was that Gravity, through Darren Marks, issued instructions about the promotional photographs to be used in the December 2017 messages and so did Gravity about the music to be used in the e-mail of 20 January. But these communications need to be placed in the context of NV also explaining to Gravity at times things that it thought needed to be done (see e.g. e-mail of 11 July 2017), and the strong objections of the Claimant to the messages, inconsistent with a relationship of subordination in which he was being directed as a subordinate.

45. The third matter is, it is said, that the Claimant was required to attend meetings with Mr Treherne and Mr Beedham, to wear smart casual clothes, and to turn up to Gravity on Saturdays. I do not accept, however, that any of these were requirements on the Claimant, or he was directed to do them: meetings took place where convenient, no instruction was given about dress, and while the Claimant turned up in practice every Saturday to ensure all went well, I do not consider this was because of any direction over him.

46. Finally, as to other factors which might be relevant, there was little integration of the Claimant into Gravity's business. There were some joint meetings, and the Claimant had access to Gravity's media platforms; but the Claimant and NV worked for others outside, and much of the promotion work done by the Claimant and his the freelancers working for NV appeared to be on behalf of NV or Skye rather than Gravity.

47. Stepping back, and looking at the relationship in the round, it does not seem to me to be characterized by the subordination of the Claimant or direction of him. Rather, it appears as a relationship between equal and independent commercial parties, working jointly together, and occasionally setting out their opinions of how the work should be done. The contractual documents reflect this.

48. That disposes of the point on "employment under" but for completeness I should briefly address other matters.

    48.1. Mr Bheemah accepted that an unfettered power of substitution would mean that the Claimant here was not personally performing services, so that the ***Allonby*** test would not be met. It seems that in ***Halawi*** the Court of Appeal assumed that personal service was a necessary element of ***Allonby*** (see Arden LJ at paragraphs 45-49). On the relationship here between the Claimant and Gravity, I do not think he was required to turn up personally every night, in accordance with the contractual documents (even if he in fact did do so to ensure the nights were a success). I do not think there was ever a written or oral term to that effect, and the practice of in fact turning up is too ambiguous to lead to the inference of a duty.

48.2. I accept, however, that the Claimant would have met the remuneration condition of ***Allonby***. The money for tables was paid to him by the Respondent, and I accept the submission that the table receipts was remuneration coming indirectly from the Respondent by means of the agreement in the contract.

49. **Contract worker.** I consider this to be the most difficult point. The sole issue in dispute is whether the Claimant had an employment contract with NV. Relevant criteria for this are set out in ***Neufeld*** at paragraphs 78-89 per Rimer LJ. I accept that the fact the Claimant is a sole shareholder does not prevent a contract of employment arising, nor does the fact that he exercises sole control or that he built the company up. There was no written contract here with the Claimant, which is an "important consideration" (paragraph 89). Nor is there any conduct to go on (e.g. of the Claimant working set hours, taking holidays, or being paid sick pay).

50. In the event, I consider there is no sufficient evidence for me to conclude that the Claimant was an employee of NV. I do not accept Mr Bheemah's argument that the relevant terms of the contract can be found in how the contract operated with Pryzm. Quite apart from the fact that I saw no evidence of the terms of that contract (which pre-dated the creation of NV), as a commercial contract between two parties it cannot determine the subsequent relationship between the Claimant and NV. I consider the mere fact of the pay slips, on which no tax or NICs were in fact paid and which did not even lead to the sums being paid to the Claimant, is not a sufficient basis on which to find there was a contract of employment between him and NV. There was simply no other relevant evidence on the relationship.

51. **WTR, regulation 2.** As both counsel agreed, the issue of whether the Claimant was a "worker" within the meaning of regulation 2(1) is equally determined by the ***Allonby*** criteria. Given my findings above about the lack of direction, it follows that the Claimant was not a worker for this purpose.

52. **Correct Respondent.** In light of my conclusions, the issue of the correct Respondent does not strictly arise. But in case it is relevant for any purpose, I consider the Claimant should have permission to bring a claim against three named individual Respondents – Mr Treherne, Mr Beedham, and Mr Marks. Mr Self did not concede this point, though he made no submissions opposing it.

53. The suggestion that the contract here was made with Hooch Limited, as the company trading in the name of Gravity, is unsupported by any evidence: that company was not mentioned once when the contract was drawn up. If the claim proceeds against Hooch, there will be serious prejudice to the Claimant since it is no longer trading. Conversely, the prejudice to the individuals is less – there is no evidence, for example, that the delay in joining them will affect the quality of the evidence. The application was made promptly, there is a good explanation for the delay, and I consider it is just to allow the claim to be brought against all three.

54. **Conclusion**. In light of the above, the claims must be dismissed. I appreciate that this may lead to serious allegations of discrimination not being tested a , but the tribunal only has jurisdiction to the extent statute confers this on it.

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Employment Judge M Ford QC

Dated 6 February 2019

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