



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Sejpal

Respondent: Rodericks Dental Limited

Heard at: London Central

On: 10 & 11 December 2019
5 February 2020

Before: Employment Judge Professor A C Neal

Representation

Claimant: Mr C Milsom (Counsel)

First Respondent: Ms J Furley (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that the Claimant was not a “worker” and she was not in “employment”. Her claims alleging discrimination by reference to the protected characteristics of (1) pregnancy and maternity and/or (2) sex together with all associated claims are dismissed.

REASONS

THE CLAIMS AND CONDUCT OF THE HEARING

1. By a Claim Form ET1 presented on 16 April 2019 the Claimant made claims against three Respondents: (1) Rodericks Dental Limited (being the corrected name of the First Respondent); (2) NHS Business Services Authority – State of Financial Entitlements; and (3) NHS BSA.

2. Those claims originally alleged (1) unfair dismissal; (2) discrimination by reference to pregnancy or maternity; (3) entitlement to a redundancy payment; (4) entitlement to unpaid notice money; (5) entitlement to unpaid holiday money; and (6) other financial payments due. The ET1 was coded “UDL/MAT/BOC/WTR(A/L)”.

3. Following correspondence between the parties and the Tribunal Employment Judge Glennie confirmed to the parties by letter dated 20 September 2019 that he had dismissed the claims against NHS Business Services Authority – State of Financial Entitlements and NHS BSA upon withdrawal by the Claimant. A formal judgment recording dismissal of the claims against those two Respondents was sent to the parties on 7 November 2019.

4. Further Particulars of the outstanding claims made against the remaining Respondent – Rodericks Dental Limited – (described as “Further and Better Particulars of Claim”) were served by solicitors acting for the Claimant on 1 October 2019. Those particulars made clear that the claims brought against the remaining Respondent are limited to: (1) discrimination by reference to the protected characteristic of pregnancy and maternity; and/or (2) discrimination by reference to the protected characteristic of sex. As the Claimant’s representative has expressed it in his closing “Submissions for the Claimant”, “In a nutshell it is said that the Claimant was dismissed because of her pregnancy whereas others were redeployed”.

5. By notice given to the parties on 20 September 2019 Employment Judge Glennie directed that there should be a Preliminary Hearing to determine a preliminary issue. That issue was “*to determine whether the Claimant was an employee or worker or neither of these*”.

6. In the wake of service by the Claimant of Further Particulars of her claim, and then following discussion and clarification of issues between counsel for the respective parties and the Employment Judge at the outset of this hearing, the scope of that preliminary issue was limited by agreement to the question of whether or not the Claimant was a “worker” (and, thus, in “employment”). In particular, an earlier assertion that the Claimant was to be regarded as an “employee” by reference to **Section 230(1) of the Employment Rights Act 1996** was not pursued after she indicated at the start of this hearing that she did not seek to continue with her initial claim alleging unfair dismissal.

7. At the outset of the hearing it was made clear on behalf of the Claimant that she wished formally to withdraw her claim alleging unfair dismissal

8. For present purposes, therefore, the situation is as follows. The Claimant's position is that she was at all relevant times a "worker" within the meaning of **Section 230(3)(b) of the Employment Rights Act 1996** and that she was in "employment" within the meaning of **Section 83(2)(a) of the Equality Act 2010**. The Respondent maintains that the Claimant was a "self-employed dentist", and thus does not fall within the protective scope of the **Equality Act 2010**.

9. The hearing in relation to that preliminary issue took place over three days, during the first two of which live evidence was received, and during the third of which submissions were made orally. The third day was initially listed for 27 January 2020. However, on the application of the representative for the Respondent it was agreed that this should be postponed. The final day of the hearing eventually took place on 5 February 2020.

10. The Tribunal heard live witness evidence from the Claimant (Day 1), and from Mr Shalin Mehra (Day 2) and Mr Alpesh Khetia (Day 2) on behalf of the Respondent.

11. All of the witnesses gave evidence on the basis of prepared written witness statements. Each was subjected to cross-examination, and, from time to time, to questioning from the Employment Judge.

12. Reference was made to documentation contained in an Agreed Hearing Bundle of 476 pages, together with a small number of additional documents constituting a further 20 pages. A Supplementary Hearing Bundle containing documentation relating to financial entitlements, a standard NHS dental services contract and documentation concerning "national performers" was also prepared, which contained a further 101 pages.

13. The representatives of the parties prepared an agreed bundle of key authorities for use on the final day of the hearing and also produced written skeleton arguments by way of closing submissions. The Employment Judge places on record his appreciation of the care and attention to detail reflected in the documents produced for his benefit.

14. Shortly after completion of the hearing on Day 3, the London Central office of the Employment Tribunals was closed in the context of lockdown occasioned by the Covid-19 pandemic. The files relating to this case were located in the London Central office during that time. By the time the office was reopened to facilitate access to materials and files the Employment Judge had been diagnosed with a serious health issue requiring surgery. The necessary medical procedures were not completed until mid-October 2020, after which the Employment Judge has been provided with the relevant files to work on at home.

15. The Employment Judge makes his apologies for the delay in finalizing his judgment by reason of the above circumstances and places on record his appreciation to both counsel and those instructing them for their understanding and the kind wishes expressed in that context.

BACKGROUND FINDINGS OF FACT

(1) The Relationship Between the Parties

16. The Claimant is a dentist and a member of the Faculty of Dental Surgery. After graduating from King's College London in 2007 with a BDS (Hons) degree in Dental Surgery, she completed her vocational training in Gillingham in 2007/8, and thereafter held a SHO position at Barnet Chase Farm Hospitals until August 2009.

17. The Respondent is a limited company which owns and operates some 100 dental practices across the United Kingdom.

18. It is common ground that dentistry is a highly regulated profession. Dentists are required to register with the General Dental Council (GDC) in order to practice dentistry in the United Kingdom. The GDC is the professional regulator, which role includes ensuring that a set of professional conduct standards (the "Standards for Dental Care Professionals") is applied and adhered to. In addition to satisfying requirements for designated qualifications, practising dentists are required at all times to be covered by adequate professional indemnity insurance.

19. Dental practices in the United Kingdom are regulated by the Care Quality Commission (CQC) which regulates all health and social care services by reference to the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014** under the umbrella of the **Health and Social Care Act 2008**.

20. The Claimant first entered into a working relationship with the Respondent with effect from 12 August 2009. That relationship was governed by a written contract [Bundle 47-62] dated 10 June 2009 ("Rodericks Ltd Associateship Contract for use in GDS Contracts"). During the period of this contract the Claimant occupied a position of "Associate" at the Respondent's practice in Oxford.

21. Subsequently in 2010 the Claimant's contract with the Oxford practice was terminated and a new written contract was entered into between her and the Respondent for the position of "Associate" at the Respondent's newly opening practice in Kensington ("Rodericks Ltd Associateship Contract for use in PDS Plus Contracts"). There was a short "interim" period between the Oxford contract terminating and the Claimant commencing work at the Kensington practice, during which time the Claimant carried out school and domiciliary visits. The Claimant's contract in relation to the Kensington practice was dated 8 November 2010 [Bundle 63-78].

22. Thereafter, following an exchange of e-mails between the parties, the Claimant's contract with the Kensington practice was replaced by a new written "Associate" contract dated 20 January 2013 [Bundle 79-95]. It is agreed by both parties that this 2013 contract is the relevant document in force at the time of the events underlying this litigation at the time of the closure of the Kensington practice in December 2018.

23. In September 2018 a "Vacancy & Leaver Profile Form" was completed in relation to the Claimant [Bundle 170] in which it was stated that the Claimant would leave the practice on 11 January 2019. The Claimant has explained that the reason for her leaving was to commence a period of maternity leave. That January 2019

leaving date was subsequently brought forward to 10 December 2018 and it is common ground that the Claimant ceased to perform work at the Kensington practice as of that date.

24. At around the same time as the Claimant commenced her maternity leave it was announced that the Respondent's Kensington practice was to be closed on expiry of the lease for the premises in which it was situated. The lease ended on 31 December 2018.

25. Shortly before the ending of the lease on the Kensington practice, and subsequent to being informed of the pending closure of that practice, the Claimant and her husband entered into discussions with the Respondent over whether there might be any prospect of what was described as a "joint venture partnership" for establishing a dental practice in new premises in Kensington. The initiative, which is described in paragraph 64 of Mr Mehra's witness statement, and on which the Claimant commented during the course of cross-examination, eventually came to nothing, although the Claimant produced a "business plan", while approval in principle was sought and given on the Respondent's part for a partnership of the kind envisaged.

26. In the event, the Kensington practice duly closed with effect from 14 December 2018. Since her commencement of maternity leave and the closure of the Kensington practice the Claimant has performed no work in relation to the Respondent.

(2) Dentistry: A Regulated Profession

27. It is common ground that this case has to be considered in the context of the particular regulatory framework within which dentistry is permitted and overseen in the United Kingdom. In order to illustrate the scope of external supervision, the standards to which a dentistry practice will normally be held, and the range of regulatory arrangements in place to ensure adherence to appropriate standards, the parties – as has already been noted – produced a Supplementary Hearing Bundle for the convenience of the Tribunal. The Employment Judge is grateful for the assistance of both counsel in identifying the key elements of this regulatory framework – much of which reflected common ground between the parties.

28. Thus, as explained by Mr Mehta in paragraphs 7 – 11 of his witness statement, the requirements for setting up and running a dental practice involve registration with, and inspection by, the Care Quality Commission (CQC).

29. Relations with the NHS for the provision of dental services in any particular area turn upon a contract which provides *inter alia* for designated hours of access, as well as numbers of patient transactions to be provided (referred to as "Units of Dental Activity" or "UDAs"). Mr Mehta gave a description of how the post-2006 NHS dental contract operates and how the Respondent had entered into this area of practice at a time when many dental providers were withdrawing from NHS provision in favour of delivering private dental care services.

30. Requirements relating to the qualifications and skills of dental care professionals within a practice are set out in law, and include registration

requirements as well as the holding of professional indemnity cover. Throughout the profession standards are laid down with which every dentist must comply.

31. In order to appreciate some of the detailed arrangements provided for in this context, the Tribunal was furnished with extracts from a document entitled “Standard General Dental Services Contract – July 2018” [Supplementary Bundle 22 – 69], along with extracts from a document entitled “General Dental Services Statement of Financial Entitlements 2013” [Supplementary Bundle 1 – 21]. Also provided for the Tribunal was a copy of a “Form NPL 1”, being a “National Performers Lists Application Form” [Supplementary Bundle 70 – 101], stated to be produced in association with a process laid down in accordance with the **National Health Service (Performers Lists) (England) Regulations 2013**.

32. From time to time reference was also made to particular documents used by the Respondent to record and communicate information in relation to work carried out by dentists in their practices. It was a matter of dispute between the parties as to whether certain of these documents reflected the regulatory regime pertaining to dentistry in the United Kingdom, or whether they should be regarded as “normal employment documents” whose usage and content might be drawn upon in the process of determining the employment status of dentists to which they related.

(3) The Respondent’s “Business Model” and Regulatory Compliance

33. The Respondent operates in excess of 90 dental practices in the United Kingdom. Within their organization there are 490 dentists described by Mr Mehta as “self-employed” and a further 10 dentists who he describes as “employed”. There are also other members of staff, in the guise of hygienists and therapists, who are engaged by the Respondent on what Mr Mehta described as “self-employed contracts”.

34. Mr Mehta described for the Tribunal how each practice has a contract with the NHS to provide dental services in its area. That contract sets out the hours the NHS expects the practice to be open and the number of UDAs the practice must complete per annum. If this target is not met it can result in a reduction in the number of UDAs, a loss of contract and/or financial sanctions being placed on the practice. The practice is also expected to comply with NHS regulations when providing treatment.

35. The practice must be registered with the Care Quality Commission (CQC) which imposes a number of legal requirements on a dental practice in respect of the care it provides patients, those it can employ and what monitoring of staff it must undertake. For example, under regulation 19 the practice must ensure that those who undertake “regulated activities”, which includes dental care professionals, are “fit and proper”. That means they are of good character and have the qualifications, competence, skills and experience which are necessary to perform the work. If the practice were inspected by the CQC it would need to provide evidence that anyone carrying out the regulated activities for the practice met these requirements. The practice therefore needs to ensure that it has the following on record for each dentist when they start work for them: (a) Proof of registration with the GDC; (b) Clinical references; (c) DBS check; (d) CV; (e) Proof of indemnity insurance; (f) Proof of vaccinations; (g) CPR certificate; (h) Ionising

Radiation Medical Exposure Regulation training; and (i) Safeguarding Children and Vulnerable Adults – Level 2 certificate.

36. Each dental care professional, namely dentists, hygienists, therapists and nurses, must also be registered with the General Dental Council (GDC). This is again a legal requirement imposed on them by the GDC. As part of that registration, the GDC requires dentists to have professional indemnity cover; in fact, a failure to have this cover is considered a serious offence which could result in erasure. The GDC also has a set of standards for Dental Care Professionals, which every dentist must comply with.

37. As a practice it is necessary to operate within these legal requirements imposed on it and dental care professionals. Therefore, the practice's contracts, policies and procedures are designed to ensure that it is compliant with the legal and regulatory framework.

THE RELEVANT LAW

38. So far as is relevant to the issue in this case **Section 230 of the Employment Rights Act 1996** (Employees, workers etc.) provides that:

- (1) ...
- (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under) —
 - (a) a contract of employment, or
 - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;and any reference to a worker's contract shall be construed accordingly.
- (4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.
- (5) In this Act “employment” —
 - (a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and
 - (b) in relation to a worker, means employment under his contract;and “employed” shall be construed accordingly.

39. The relevant parts of **Section 83 of the Equality Act 2010** (Interpretation and exceptions) provide that:

- (1) This section applies for the purposes of this Part.
- (2) “Employment” means —
 - (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work; ...

...

- (4) A reference to an employer or an employee, or to employing or being employed, is (subject to section 212(11)) to be read with subsections (2) and (3); and a reference to an employer also includes a reference to a person who has no employees but is seeking to employ one or more other persons.

...

40. The vexed issue of what constitutes “employee” status, “worker” status, or some other qualifying status for the purposes of employment law in the United Kingdom has given rise to increasing volumes of case-law during the 21st century.

41. For the purposes of this case the focus is upon the status of “worker”, although it has always to be borne in mind that much of the jurisprudence has developed out of situations in which attempts to identify the distinction between “employee” and “worker” has been at the forefront of attention for the courts, together, more recently, with a particular concentration upon the category of “worker” described in **Section 230(3)(b) of the Employment Rights Act 1996** (sometimes referred to in shorthand as “limb (b) workers”).

42. Counsel for the parties have collaborated to produce a bundle of authorities for the benefit of the Tribunal. That bundle of authorities drew the attention of the Employment Judge to the following cases:

- Judgments handed down by the Court of Justice of the European Union in **Case C-232/09, Dita Danosa v. LKB Lizings SIA**, [2010] ECR I-11405; **Case C-316/13, Gérard Fenoll v. Centre d'aide par le travail 'La Jouvène'**, [2016] IRLR 67; and **Case C-216/15, Betriebsrat der Ruhrlandklinik gGmbH v. Ruhrlandklinik gGmbH**, [2017] 2 CMLR 13;
- The judgments of the Supreme Court in **Autoclenz Ltd v. Belcher**, [2011] ICR 1157; **The Catholic Child Welfare Society and others v. Various Claimants and The Institute of the Brothers of the Christian Schools and others**, [2013] 2 AC 1; **Bates van Winkelhof v. Clyde & Co LLP**, [2014] 1 WLR 2047; **Pimlico Plumbers Ltd v. Smith**, [2018] ICR 1511; and **Gilham v. Ministry of Justice (Protect Intervening)**, [2019] 1 WLR 5905.
- The Court of Appeal judgments given in **Windle v. Secretary of State for Justice**, [2016] ICR 721; **Pimlico Plumbers Ltd v. Smith**, [2017] ICR 657; and **Uber BV and others v. Aslam and others**, [2019] ICR 845.
- The judgments given in the High Court cases of **Ready Mixed Concrete (South East) Ltd v. Minister of Pensions and National Insurance**, [1968] 2 QB 497; **Whetstone (t/a Whelby House Dental Practice) v. Medical Protection Society Ltd**, [2014] EWHC 1024; and **Various Claimants v. Barclays Bank Plc**, [2017] IRLR 1103.
- The judgments of the Employment Appeal Tribunal in **Byrne Bros (Formwork) Ltd v. Baird**, [2002] ICR 667; **James v. Redcats (Brands) Ltd**, [2007] ICR 1006; **Consistent Group Ltd v. Kalwak**, [2007] IRLR 560; **UK Mail Ltd v. Creasey**, UKEAT/0195/12/ZT; **Hospital Medical Group Ltd v. Westwood**, [2013] ICR 415; **Community Dental Centres Ltd v. Sultan-Darmon**, UKEAT/0532/09/DA; **Wright v. Aegis Defence Services (BVI) Ltd and Others (Sub-categories)**, [2018] UKEAT 0173/17/2301; **Uber BV**

and others v. Aslam and others, [2018] ICR 453; and **Stuart Delivery Ltd v. Mr Warren Augustine**, UKEAT/0219/18/BA.

- The decision of the Employment Tribunal in **Leyland & Ors v. Hermes**, ET/1800575/2017, and the reference from the Watford ET to the CJEU in case **C-692/19, B v. Yodel Delivery Network Ltd.**
- The decision of the Upper Tribunal Tax and Chancery Chamber in **Weight Watchers (UK) Ltd and others v. The Commissioners for HM Revenue and Customs**, [2011] UKUT 433.

43. It is noted that, subsequent to the completion of the hearing in this case (and during the temporary closure of the London Central office of the Employment Tribunals referred to above), a number of developments have taken place in relation to certain of the cases cited above, namely: (1) a hearing on appeal from the judgment of the Court of Appeal in the case of **Uber BV and others v. Aslam and others** has taken place before the Supreme Court; (2) the Supreme Court has handed down its judgment in the case of **Various Claimants v. Barclays Bank Plc**; and (3) the Court of Justice of the European Union has issued a “reasoned order” under Article 99 of the Rules of Procedure of the Court, without inviting oral or written submissions from the parties, in relation to the reference made in **C-692/19, B v. Yodel Delivery Network Ltd.**

44. It will immediately be appreciated from the previous paragraph that this is an area of the law which has been, and continues to be, in continuous flux. Indeed, some idea of the challenges posed by incomplete or loosely drafted statutory provisions can be gleaned from the comments of Lord Wilson at paragraph 11 of his judgment in **Pimlico Plumbers Ltd v. Smith** before the Supreme Court.

45. Even the question of what might be the direct historical roots of the modern terminologies is far from clear. Thus, for example, the historical outline offered by Lord Wilson in respect of what he describes as “the birth of the modern ‘worker’...” (at paragraph 10 of his judgment) may be contrasted with the version of “the legislator’s intention” offered by the then President of the Employment Appeal Tribunal, Mummery LJ, in **Brook Street Bureau (UK) Ltd. V. Dacas (UK) Ltd.**, [2004] EWCA Civ 217 (at paragraph 5 of his judgment) – a version which itself has been criticized in academic writing when regard is had to the expressions utilized during the Parliamentary debate recorded in **Hansard** (HC Deb. 14 Feb. 1963, vol. 671, cc 1503-618).

46. Against that less than satisfactory state of affairs, the Tribunal turns to consideration of the respective arguments put forward on behalf of the parties.

DISCUSSION

47. At the heart of this case is a written document reflecting the terms of a contract into which the parties entered, referred to as an “Associateship Contract”. There have been three versions of such an “Associateship Contract” over the course of the ten and a half years in which the parties enjoyed a professional relationship together.

48. Upon commencement of a first engagement with the Respondent in 2009, the Claimant signed a written document entitled “Associateship Contract for use in

GDS Contracts” [Bundle 47–62]. That related to services to be provided under the umbrella of a GDS (General Dental Services) contract between the Respondent and Oxfordshire Primary Care Trust.

49. In the following year, following the Claimant’s move to London, the 2009 document was replaced by a new written document entitled “Associateship Contract for use in PDS Plus Contracts” [Bundle 63–78]. That related to services to be provided under the umbrella of a PDS Plus (Personal Dental Services Plus) contract between the Respondent and the Kensington & Chelsea Primary Care Trust. The Claimant signed that document on 8 November 2010.

50. On 20 January 2013 the Claimant signed a new written document entitled “Associateship Contract for use in PDS Plus Contracts” [Bundle 79–95]. That related to services to be provided under the umbrella of a PDS Plus (Personal Dental Services Plus) contract between the Respondent and the North West London Primary Care Trust.

51. It is agreed that the 2013 “Associateship Contract for use in PDS Plus Contracts” is the relevant version for the purposes of this preliminary issue, and it is to that document that reference is made in the following.

52. On the face of its wording the 2013 “Associateship Contract” into which the parties entered is drafted unequivocally in language which is intended to exclude the Claimant enjoying the employment status of “employee”. Thus, it is provided that:

- (5) **Nothing in this agreement shall constitute a contract of employment between the Company and the Associate. This is a contract for services.**

The question in this preliminary hearing therefore becomes whether the Claimant can establish that the agreement constitutes:

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;

53. The Claimant’s position is that the engagement between herself and the Respondent (regardless of the written document signed on 20 January 2013) constituted just such a “limb (b)” engagement.

54. The Respondent disputes that characterization and maintains that at all relevant times the engagement was one of “self-employment” falling outside the definition of “worker” in **Section 230(3)(b) of the Employment Rights Act 1996**.

55. Counsel for the parties have both approached the case on the basis of addressing the written contract entered into between the parties on 20 January 2013, and clarifying or supplementing the content of that written agreement by reference to the evidence set out in witness statements, which were then tested in cross-examination.

56. As is often the case in hearings to determine the issue of employment status, the respective written witness statements contain more than their fair share of what

can only be described as “legal submissions” on the point. It has thus been of particular importance to consider the oral evidence of the witnesses given under cross-examination.

57. It has been common ground that the Tribunal is required to identify the “true agreement” between the contracting parties, and particular observations drawn from the written and oral evidence have been taken as the basis upon which it is said the Tribunal should reach its conclusion. The Claimant has put her case forcefully and has gone so far as to submit that, in certain respects, the written agreement entered into by the parties constitutes “a sham” in the sense which is said to have been in the contemplation of the Supreme Court when considering the case of **Autoclenz Ltd v. Belcher**.

58. The Tribunal begins by drawing upon the guidance of Lord Wilson in his judgment handed down by the Supreme Court in **Pimlico Plumbers Ltd v. Smith**, to the effect that the definition of “worker” in relation to **Section 230(3)(b) of the Employment Rights Act 1996** is to be equated with “employment” for the purposes of **Section 83(2)(a) of the Equality Act 2010** (see paragraph 14 of that judgment). For that purpose, the approach of the Supreme Court in **Bates van Winkelhof v. Clyde & Co LLP** remains valid.

59. That being the case, it is also noted that, in a case where the import of a written agreement is in issue between the parties, the approach for the Tribunal to adopt has been helpfully clarified by HHJ Eady, QC, at paragraphs 100–101 of her judgment for the hearing of **Uber BV and others v. Aslam and others** before the Employment Appeal Tribunal in terms that:

100. ...the ET’s starting point must always be the statutory language, not the label used by the parties: simply because the parties have used the language of self-employment does not mean that the contract does not fall within section 230(1)(b); the distinction drawn by that provision being explained by Baroness Hale of Richmond DPSC in Bates van Winkelhof v Clyde & Co LLP [2014] ICR 730 SC(E), as follows:

“25. ... within the latter class [the self-employed], the law now draws a distinction between two different kinds of self-employed people. One kind are people who carry on a profession or a business undertaking on their own account and enter into contracts with clients or customers to provide work or services for them. ... The other kind are self-employed people who provide their services as part of a profession or business undertaking carried on by someone else. ...”

101. Which side of the divide an individual falls will inevitably be case- and fact-sensitive. ...

60. It must furthermore be the case – a conclusion arguably reinforced by the course of action adopted by the Court of Justice of the European Union in relation to the reference made by the Watford Employment Tribunal in **Case 692/19, B v. Yodel Delivery Network Ltd** – that the Supreme Court at the time of handing down their judgment in **Pimlico Plumbers Ltd v. Smith** has been content that the development of the case-law in the United Kingdom is satisfactorily in conformity with the requirements of European Union law where – as in this case – the Claimant’s claim relies upon rights transposed into United Kingdom law from a social policy Directive agreed at the level of the European Union.

61. A further observation may be made at this stage in relation to arguments touching what is agreed as being the “highly regulated” nature of the dentistry profession in the United Kingdom. In particular, while recognizing that concern was with a specific regulatory regime (that relating to the operation of private hire vehicles in London), the Tribunal has borne in mind the observations of HHJ Eady, QC, in the hearing of **Uber BV and others v. Aslam and others** before the Employment Appeal Tribunal (at paragraph 112 of her judgment) to the effect that:

As for the regulatory requirements point, where there is no suggestion that such requirements were intended to give rise to a particular form of employment or worker status, that is no doubt part of the relevant background. That said, I cannot see that an ET has to disregard factors simply because they might be said to arise from compliance with a particular regulation. In the present case, personal service was a regulatory requirement but was also a relevant matter in determining worker status. An ET is not obliged to disregard such a factor, although it should see it in context, which may include the regulatory context. At the risk of repetition, it is all part of the factual matrix for the ET to assess.

62. Turning to the particular submissions and arguments made on behalf of the respective parties, the Tribunal has opted, in determining its approach to evaluation of the submissions made in this particular case, to structure its considerations in broadly the way set out by the Claimant. Thus, counsel for the Claimant, in a clearly expressed set of submissions, focused upon nine aspects of the relationship between the parties as being particularly significant for the task of determining whether the Claimant could be said to fall within the protective scope of **Section 230(3)(b) of the Employment Rights Act 1996** and **Section 83 of the Equality Act 2010**. Both counsel conducted cross-examination of witnesses in relation to the issues raised within that broad framework, and counsel for the Respondent dealt with those matters both in her written outline of submissions and in her helpful final oral comments on Day 3 of this hearing.

63. The nine aspects identified by counsel for the Claimant were set out as being:

- (1) The Claimant's mode of appointment and selection (including the probation period);
- (2) The terms of the contract;
- (3) Mutuality of obligations;
- (4) The requirement for personal service and the true position as regards cancellation and substitution;
- (5) Pay and apportionment of financial risk;
- (6) The use of the Respondent's resources;
- (7) Control;
- (8) Integration within the Respondent's operations; and
- (9) Integration in the eyes of the public (Was the Claimant in business on her own account?).

64. The evaluation of the Tribunal follows the order of those matters as presented by counsel for the Claimant.

(1) **The Claimant's mode of appointment and selection (including the probation period)**

65. In support of the submission that the appointment and selection processes of the Respondent indicate the Claimant's status as being a "worker" and "in employment", reliance is placed upon the "recruitment" arrangements adopted by the Respondent, involving interview, shortlisting, the use of a "new starter" checklist and completion of a health questionnaire, and an "induction" process for new joiners. It is pointed out that the Respondent organises these arrangements through what is described as a "dental recruitment manager". The Claimant additionally points to the language of the relevant documentation, including references to various aspects of "Roderick's philosophy of practice ... and client care", as well as repeated mention of the Respondent's "team" and "teamwork".

66. As against that, the Respondent submits *inter alia* that a duty such as one to "further the interests of the practice" or the adoption of a "practice identity" (as, for example, by way of using a Rodericks business card or making use of the practice website) does not, of itself, indicate an "integrated" status as a "worker", any more than might be the case in relation to lawyers practicing in a set of barristers' chambers.

67. The Tribunal notes that the Claimant also makes submissions in relation to this factor which mention "permanence", "exclusivity" and "a rigorous degree of control". While these are addressed under other factors raised by the Claimant, in the context of "appointment and selection" they are mere submissions and do not take the evaluation of employment status any further. The same can be said for the submission of "absurdity" (at paragraph 23 of the Claimant's final written submissions), while the Tribunal does not draw any clear indication of "worker" status from the references to what are (rather grandly) described as "instructions" in respect of "dress code" or "guaranteed treatments".

68. In the round, while it is right to consider the arrangements for joining and leaving the practice, along with any associated documentation, as well as the role of "practice managers", as part of the overall "patchwork" of arrangements, none of the matters raised by the Claimant under this head serves, in itself, to indicate "worker" status as claimed.

(2) **The terms of the contract**

69. It is common ground that the "labels" adopted by the parties – particularly in the written "Associateship Contract" signed by the Claimant – will not necessarily be decisive for the determination of employment status. The Tribunal notes particularly the observations of the Supreme Court in the case of **Autoclenz Ltd v. Belcher** in this context. The Claimant additionally submits that the functioning of the relationship between the parties under a contract "devised entirely by the Respondent" illustrates an alleged "inequality of bargaining power" which should be taken into account by the Tribunal.

70. The Tribunal notes, as has already been set out, that the Associateship Contract in question is drafted in the language of "self-employment" and clearly intended to avoid the assumption by the Respondent of statutory employment protection obligations. However, in relation to the submissions founded upon

observations by the Supreme Court in Autoclenz Ltd v. Belcher the Tribunal does not consider that, in the circumstances of this case, there is anything near sufficient to reach the conclusion that the agreement (or parts of it) constitutes “a sham” in the sense in which that expression is used in English contract law. Nor does the Tribunal consider this contract to be an example of “lawyer-drafted documentation” giving rise to the abuse identified by the then President of the Employment Appeal Tribunal, Elias J, in Consistent Group Ltd v. Kalwak and as envisaged by Underhill LJ in his Court of Appeal judgment in Pimlico Plumbers Ltd v. Smith. On the evidence presented in this case, the Tribunal rejects the submission on behalf of the Claimant that the terminology of the written agreement “does not reflect the reality of the situation”. There is no evidence in this case of misrepresentation (in any of its Common Law contractual guises), nor has it been demonstrated that the Claimant has in any sense lacked the capacity to understand precisely what she was signing up to when entering into the relationship recorded in the Associateship Contract. Finally, the Tribunal does not find the submissions as to “inequality of bargaining power” made out on the evidence, and certainly not to the extent required to establish “sham” or any other reason to displace the old Common Law rule first enunciated in L’Estrange v. Graucob, as discussed by the Supreme Court in Autoclenz Ltd v. Belcher.

(3) Mutuality of obligations

71. It is accepted on all sides that there is a requirement to establish what has been described as an “irreducible minimum of mutual obligation”. That proposition flows directly from old-established case-law culminating in the Opinions of Their Lordships in the “employee status” case of Carmichael v. National Power plc, [1999] ICR 1226 (see, in particular, the Opinion of Lord Irvine). That “Carmichael principle” has most recently been referred to by the Court of Appeal in Uber BV and others v. Aslam and others. The Tribunal notes the submissions put on behalf of the Claimant in relation to the issue of “worker” status on the basis of the discussion of this matter at the level of the Employment Appeal Tribunal in James v. Redcats (Brands) Ltd (see the judgment of Elias J) and the more recent “self-debate” of Underhill LJ in the Court of Appeal cases of Windle v. Secretary of State for Justice and Pimlico Plumbers Ltd v. Smith.

72. In support of the proposition that the evidence in this case as regards “mutuality of obligation” favours a finding of “worker” status for the Claimant, it is submitted that (1) the Claimant entered an “overarching agreement” which lasted for nearly ten years, pursuant to which she regularly worked five days a week; (2) she was paid on a “piece work” basis for each UDA completed; and (3) if a UDA was available she was obliged to perform it. The Claimant also refers to the circumstance that she could not refuse to see a patient unless there had been a breakdown in patient relations, and asserts that the same would also be the case for “employed” dentists. A similar “employed dentists would do it, therefore the Claimant should be considered on a par with them” line of argument is deployed in relation to situations where no nurse was available and the obligation to respond in the event of “emergency appointments”.

73. Having regard to the entirety of the relationship between the parties, and having taken into account the extensive witness evidence tested under cross-examination, the Tribunal is firmly of the view that the engagement in this case lacked the requisite “mutuality of obligation” as established by the historical case-

law development. In particular, the evidence in relation to there being “no restriction on the right to refuse” does not support the proposition that this was not “the reality of the situation”. The Tribunal is of the view, therefore, that this relationship lacked the necessary “mutuality of obligation” (in the sense discussed by Underhill LJ) to establish “worker” status for the purposes of the Claimant’s employment protection claims.

(4) **The requirement for personal service and the true position as regards cancellation and substitution**

74. The Tribunal bears in mind the extensive case-law in relation to this issue, and in particular the “three conditions” laid down by McKenna J in the case of **Ready Mixed Concrete (South East) Ltd v. Minister of Pensions and National Insurance**. It is noted that the **Ready Mixed Concrete** case concerned statutory definitions for the purposes of National Insurance entitlements, and the point was also taken that the decision in **Weight Watchers (UK) Ltd and others v. The Commissioners for HM Revenue and Customs** arose out of a dispute concerning the taxation of payments in an employment context. Nevertheless, the relevance of those approaches has more recently been acknowledged by the Supreme Court in **Pimlico Plumbers Ltd v. Smith**.

75. The Claimant focuses upon the issue of “substitution”, and seeks to suggest (drawing creatively upon **Ready Mixed Concrete** and Lord Wilson’s comments in the Supreme Court hearing of **Pimlico Plumbers Ltd v. Smith**) that what is described as “a fettered right of substitution” may be consistent with “employment”. In putting that argument, counsel for the Claimant rightly acknowledges that “[i]n general terms ... an unfettered right of substitution is regarded as inconsistent with the requirement for personal service”, and that “[I]t would be wholly exceptional ... to imply such a right” (see paragraph 40 of the Claimant’s final written submissions, recognising the observations of Sir Terence Etherton MR in his Court of Appeal judgment in **Pimlico Plumbers Ltd v. Smith**). An example of a sufficiently “personal” substitution is offered by reference to the Employment Tribunal decision in **Leyland & Ors v. Hermes** – although it may be questioned whether that decision is of any more general significance. It is submitted by the Claimant that “[T]he written terms unequivocally require personal service”, and that there was what is sometimes described as “a wage/work bargain” (the term introduced by Professors Paul Davies and Mark Freedland).

76. The clause in question [Bundle page 87] provides that:

In the event of the Associate's failure (though ill health maternity paternity or other cause) to utilise the facilities for a continuous period of more than 14 days the Associate shall use his best endeavours to make arrangements for the use of the facilities by a locum tenens, such locum tenens being acceptable to the Primary Care Trust and the Company to provide Personal Dental Services Plus/Personal Dental Services as a Performer at the practice, and in the event of the failure by the Associate to make such arrangements the Company shall have authority to engage a locum tenens on behalf of the Associate and to be paid for by the Associate. The Company and Associate will agree the method of payment of the locum tenens. The Company will notify the PCT that the locum tenens is acting as a Performer at the Practice. The Associate will be responsible for obtaining and checking references and the registration status of the locum and ensuring that the locum is entered into the Performers list of a Primary Care Trust in England and will confirm to the Company that these requirements have been carried out, The Associate will

provide the Company with such relevant information as he may reasonably require.

77. The Respondent's position is that the Claimant was not under an obligation to provide the services personally, with the consequence that she is not a "limb (b) worker" or "employed" for the purposes of the **Equality Act 2010**. It is said that the issue of "substitution" requires consideration of two dimensions, reflecting (1) the position regarding the regulatory framework established for the dentistry profession and (2) the contractual arrangements set out in the Associateship Contract entered into by the parties and signed by the Claimant. Challenge is made to the Claimant's version of events during her recruitment, and particular reference is made to the Claimant's registration with the NHS as a "performer". At paragraph 26 of the Respondent's final written submissions the case is articulated in terms that:

It is submitted that an unfettered right to send a substitute, does not equate to an unfettered right to send a substitute without notice and without meeting regulatory requirements. In this case, the right of substitution is present, so long as the dentist meets the minimum legal and regulatory requirements i.e the substitute must be qualified to perform the services; this is not at the discretion of the Respondent.

and, more generally, that:

Ensuring legal and regulatory obligations are met does not equate to fettering the right to send a substitute. If this were the case, it would render it impossible for any self-employed individual within a regulated profession to send a substitute.

78. Counsel for the Respondent was also keen to draw the Tribunal's attention to the decision of the Employment Appeal Tribunal in **Community Dental Centres Ltd v. Sultan-Darmon**, where, it is suggested, a "near identical locum clause" was considered not to have given rise to an obligation upon the dentist in question personally to perform the work, with the result that the Claimant in that case was held not to be a "worker".

79. The Tribunal has considered at great length the evidence presented in relation to "substitution" and the operation in practice of the "locum tenens clause" in the Associateship Contract signed by the Claimant. In addition, both counsel have devoted substantial parts of their final written submissions to offering interpretations of the clause itself, as well as to interpretation of the oral evidence given under cross-examination on this aspect of the relationship.

80. Notwithstanding the valiant efforts by counsel for the Claimant (in particular at paragraph 45 of the Claimant's final written submissions) to make a case that the clause did not reflect a true freedom/right to substitute, the Tribunal finds that the assertion to the effect that, "At no stage did the Claimant exercise a substitution right nor is she aware of it being exercised in Kensington", does not serve to displace a clearly expressed right (if not, in certain circumstances, duty – at least to the extent of the Claimant being required to use "best endeavours") of substitution contained in the "locum tenens clause". The purpose of the clause, and the modalities for its activation, are clear, and it is not an answer to the Respondent's case to point out that no occasion had so far arisen in which it might have proved necessary to trigger that provision. Nor is this an answer to the

unchallenged assertion that the clause forms part of standard terms throughout the dentistry profession in the United Kingdom.

81. The Tribunal is satisfied that there existed a clear and genuine right for the Claimant to introduce a “locum tenens” for performance of her obligations under the Associateship Contract. Only the regulatory requirements that such a locum must satisfy specified standards of competence and qualification served to limit the absolute freedom of the Claimant in circumstances where the clause might be triggered, and the Tribunal is unable to accept the proposition made at paragraph 47 of the Claimant’s final written submissions.

(5) **Pay and apportionment of financial risk**

82. The Claimant points out that she was paid for NHS work (something in excess of 75% of her total practice) on what she described as a “piece-work basis”, by reference to a set rate for each UDA. There was dispute as to whether the rate payable was subject to any “right to negotiate” – the Respondent maintaining that minimum pricing for such treatment was set by them on the basis of clinician feedback. The Respondent also submitted that invoices shown in evidence [in particular, Bundle 400–418] demonstrated that different charges were made by other dentists for treatments which were the same or similar, and that such variations were at the discretion of the individual dentist, rather than settled upon by the Respondent. This contrasted with the Claimant’s suggestion that, in relation to private work, there was a “minimum floor” below which she had no authority to charge, while charges in excess of the “minimum floor” required clearance from the Respondent. It was common ground that, for certain treatments at particular times, there were what might be described as “special offers” in relation to the rates charged, where the fee chargeable was set by the Respondent.

83. So far as the arrangements for pay were concerned, the Claimant appears to have been paid monthly on a set day, with “pay slips” being produced by the Respondent. The amounts paid reflected the fees for treatments carried out (collected by the Respondent, either directly from the NHS or from private patients), from which was deducted 50% for the use of the practice laboratory and related facilities. The Claimant paid tax on these payments as a “self-employed person”. It was also the case that the Claimant was responsible for any damage which might be inflicted by her. Reference was also made to pension and maternity cover, although it was conceded that the Respondent did not make any “employer’s contribution” to those, while it later transpired that administration and responsibility for those benefits was not through the Respondent.

84. In light of the evidence produced in relation to these issues of pay and “financial risk”, the Tribunal has formed the view that the Respondent’s propositions that (1) the Claimant was required to perform services personally and that (2) associated financial risk remained with the Claimant are made out. The references to pension and maternity benefits do not provide any evidence to the contrary, while the method of accounting to the Revenue for payment of tax on a “self-employed basis” does not, in itself, take the matter one way or the other.

(6) **The use of the Respondent's resources**

85. Little further needs to be said in relation to this matter. Thus, both the written submissions for the Claimant and those for the Respondent recite that: “The resources were provided by the Respondent albeit that the Claimant contributed to the same by way of a deduction in receipts to the Surgery. Whilst the Agreement envisages considerable flexibility in the choice of resources it is clear that certain equipment is positively encouraged by the Respondent through presentations and shows of the preferred provider.”

86. It is also common ground that equipment was ordered by the Respondent, and the Respondent is vicariously liable for any defects in that equipment.

(7) **Control**

87. Counsel for the Respondent drew the attention of the Tribunal to the “traditional” approach deriving from the observations of McKenna J in **Ready Mixed Concrete**, to the effect that:

Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted.

88. Attention was also drawn by counsel for the Claimant to the judgment of the then President of the Employment Appeal Tribunal, Langstaff J, in **Wright v. Aegis Defence Services (BVI) Ltd and Others (Sub-categories)**, where he stated that:

It would be an error ... to hold that there may be workers such as chefs, cabinet makers, composers, professional football players and nurses whose skills and, therefore, the occasions in which they may be required to exercise them, often involve judgement, and as such are not susceptible to intimate direction by an employer ... the question does not depend, as the cases make clear, upon the practical demonstration of control by drawing attention to particular instances when control has or has not been exercised, but rather to what is known of or maybe inferred as to the contract between the parties which is said to give rise to the right in the employer to direct in relevant respects

along with the observation by Lord Phillips in the Supreme Court hearing of **The Catholic Child Welfare Society and others v. Various Claimants and The Institute of the Brothers of the Christian Schools and others**, to the effect that:

Today it is not realistic to look for a right to direct how an employee should perform his duties as a necessary element in the relationship between employer and employee. Many employees apply a skill or expertise that is not susceptible to direction by anyone else in the company that employs them. Thus the significance of control today is that the employer can direct what the employee does, not how he does it.

89. The Claimant points to requirements for her to comply with a variety of procedures or processes (including “practice policies”, “appraisal”, a “whistleblowing” policy, and arrangements to support “performers in difficulty”) as indicating the existence of sufficient “control” for the purposes of establishing “worker” and “employment” status. Amongst other submissions to the contrary, the Respondent emphasises the extent to which practice activity is required to comply with the regulatory framework established for dentistry in England as a particular

reason for the existence of certain of the procedures relied upon by the Claimant. It is also pointed out that the working hours for the practice (and thus for the Claimant in the normal course of events) follow from requirements established at the level of the contract between the practice and the relevant health authority, while obligations in relation to matters such as emergency treatment follow from professional standards requirements.

90. In respect of the arguments centering upon the regulatory requirements, the Tribunal has sought to discover what has been encapsulated as “the character of the relationship rather than the cause of that character”, and has borne in mind the comment of HHJ Eady in her judgment in the Employment Appeal Tribunal hearing of **Uber BV and others v. Aslam and others**, to the effect that:

I cannot see that an employment tribunal has to disregard factors simply because they might be said to arise from compliance with a particular regulation.

91. It should also be pointed out that the Tribunal declines to accept at face value the proposition (to be found at paragraph 73 of the Claimant’s final written submissions) to the effect that, where the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014** refer to “persons employed”, it “must be presumed that it is to be read in a manner consistent with prior legislation including s83 EqA 2010”. While such an interpretative result may possibly be achieved (and the Tribunal expresses no view as to whether that might successfully be done or not) in relation to the expression “persons employed”, that does not, as a matter of general statutory interpretation, necessarily follow from any “presumption” to that effect.

92. Bearing those matters in mind, and looking at the issue in the round, as part of the “factual matrix” for assessment, the conclusion of the Tribunal is that the character of the relationship between the Claimant and the Respondent was one in which the Claimant had control of her activity and performance well beyond the “clinical freedom” which followed from her professional skills and expertise, to an extent which leads inevitably to the conclusion that she was a “self-employed person” outside the protective umbrella of “worker” status.

(8) **Integration within the Respondent's operations**

(9) **Integration in the eyes of the public (Was the Claimant in business on her own account?)**

93. The final two headings adopted by counsel for the Claimant are said to be “(8) Integration within the Respondent's Operations” and “(9) Integration in the Eyes of the Patient”. It is not easy to distinguish clearly between these two headings, and, given the import of the submissions made in relation to both of them by the parties, they are here considered together for convenience.

94. The language of “integration” in the context of analysing working relationships derives from well-established case-law dealing with the distinction between those who work under a “contract of service” and those who perform work under a “contract for services”. Thus, something of a shift away from the individualised “control” test – depending substantially upon a consideration limited to the “master/servant” relationship of the employer and the worker (as recognised by

Bramwell LJ in **Yewens v. Noake**, (1880) 6 QBD 530, such that, “A servant is a person subject to the command of his master as to the manner in which he shall do his work” – to something which reflected more the nature of work within organisations was seen during the 1950s and 1960s. In the Court of Appeal case of **Stevenson, Jordan and Harrison Ltd v. MacDonald and Evans**, [1952] 1 TLR 101, Denning LJ suggested that:

One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of a business, and his work done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it.

95. That approach was considered in **Ready Mixed Concrete**, where McKenna J observed that:

This raises more questions than I know how to answer. What is meant by being ‘part and parcel of an organisation’? Are all persons who answer this description servants? If only some are servants, what distinguishes them from the others if it is not their submission to orders?

96. Subsequently, the approach to what has already been referred to above as the “control test” laid down in **Ready Mixed Concrete** was applied by Cooke J. in the case of **Market Investigations Ltd v. Minister of Social Security**, [1969] 2 QB 173, a case which is noteworthy for a statement, which was approved by Stephenson LJ in the Court of Appeal case of **Young & Woods Ltd v. West**, [1980] IRLR 201, to the effect that:

... the fundamental test to be applied is this: ‘Is the person who has engaged himself to perform the services performing them as a person in business on his own account?’ If the answer is ‘yes’ then the contract is a contract for services. If the answer is ‘no’ then the contract is a contract of service.

97. This test of “in business on his own account” has been widely applied, and in the case of **O’Kelly v. Trusthouse Forte plc**, [1983] ICR 728, there is to be found a comprehensive run-through of many of the established authorities on the issue.

98. In support of her proposition that the evidence indicates that she was integrated into the Respondent’s organization such that she should be regarded as a “worker” in “employment”, it is claimed *inter alia* that she was contractually obliged to “supervise staff on a daily basis”; she had instigated nurse training; she undertook first aid training alongside other staff who were said to be “employed”; she was required to attend “peer review meetings” at which broad practice issues were discussed; and she had attended “staff meetings” addressing the day to day running of the practice.

99. There was fundamental disagreement between the parties as to the true nature of many of these matters. The Claimant was essentially claiming that these evidenced her close involvement with the running and management of the practice (amounting to her being “integrated” into that operation), while the Respondent maintained that, where evidence of specific events or occurrences was established, this in no way indicated “integration” in the sense alleged by the Claimant, and, indeed, that many of the examples relied upon were equally capable of forming part of the activity of a “self-employed person” who did not fall within the statutory definitions of “worker” and “employment”.

100. As had been noted above, the drafting of the written witness statements tended on too many occasions to have been undertaken with a clear intention of making submissions as to the law, as opposed solely to presenting a narrative of events which might then be evaluated by the Tribunal. The same problem was experienced during the course of cross-examination, where there were occasional (if largely unhelpful) attempts to elicit the view/opinion of the witness as to the “true meaning” of expressions found in the documentation or the “real purpose/intent” underlying events which it was agreed had taken place.

101. The Tribunal has had careful regard to the accounts of what took place from the perspective of the Claimant as well as from the Respondent’s viewpoint – largely as presented by Mr Mehra in the course of giving his evidence-in-chief and in cross-examination.

102. The overwhelming impression gained by the Tribunal is that, while it is correct to say that almost all of the events/documents adverted to by the Claimant can be established by agreement or by reference to documentation in the Agreed Bundle, the interpretation attempted to be placed upon them cannot be sustained as examples of “integration” into the Respondent’s business. While it is somewhat artificial to pose the question as to whether the Claimant was “in business on her own account”, the indications – both specific to the Claimant and more generally by reference to the practice of dentistry in the United Kingdom – are substantially indicative of “non-integration”/“independence”, such that the Claimant was a “self employed person” operating largely autonomously within arrangements facilitating access to UDAs and providing access to laboratory facilities and other resources made available through the Respondent’s practice.

103. In reaching that conclusion, it should also be noted that the Tribunal did not find a great deal of assistance to be derived from the case-law on “vicarious liability” to which counsel made reference from time to time.

104. In short, the Tribunal finds that the evidence is not indicative of a relationship “akin to employment”. Nor does it support the submission that the Claimant’s position was “integrated in the Respondent’s wider operations”. Furthermore, this cannot be said to be an example of “careful choreography” of the kind articulated by Lord Wilson in the Supreme Court hearing of **Pimlico Plumbers Ltd v. Smith**.

SUMMARY AND DISPOSAL

105. The evidence and submissions in relation to this preliminary issue have ranged over a very wide range of events and aspects of the relationship between the parties during a period of a decade. This has provided the “factual matrix” for the Tribunal to assess.

106. In approaching its task of assessment, the Tribunal has sought to identify the true nature of the agreement reached between the parties as set out in the Associateship Contract which lies at the heart of the matter. As with all cases which raise the issues of law dealt with in this hearing, the situation is recognized as being highly “case- and fact-sensitive”.

107. In the light of the evidence presented, and after evaluation of that evidence as outlined above, the judgment of the Tribunal is that the Claimant was not a

“worker” or in “employment” for the purposes of her claims alleging unlawful discrimination and associated matters.

108. It therefore follows that her claims alleging discrimination by reference to the protected characteristics of (1) pregnancy and maternity and/or (2) sex together with all associated claims are dismissed.

Employment Judge Professor A C Neal
24/11/2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

24/11/2020

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS