



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Egan

**Respondent:** Hywel Dda University Local Health Board

**Heard at:** Cardiff                      **On:** 17<sup>th</sup> and 18<sup>th</sup> May 2022

**Before:** Employment Judge G Duncan

## Representation

Claimant: In person

Respondent: Mr Walters, Counsel

# RESERVED JUDGMENT

It is the decision of Employment Judge G Duncan that:

1. At all material times the Claimant was a worker of the Respondent.
2. The claim for unlawful disability discrimination contrary to the Equality Act 2010 is dismissed.
3. The claim for unfair dismissal pursuant to s98 of Employment Rights Act 1996 is dismissed.

# REASONS

## Introduction

1. The Claimant, Mr Egan, brings a claim against the Respondent health board arising from his engagement as a physiotherapist during the period June 2019 to April 2020.
2. The Claimant has represented himself throughout the course of proceedings. The Respondent is represented by Mr Walters of Counsel.
3. The matter came before me on 17<sup>th</sup> and 18<sup>th</sup> May for a preliminary hearing to consider two issues. Firstly, whether the Claimant is disabled for the

purpose of a disability discrimination claim and, secondly, the status of his relationship with the Respondent.

## **Procedure**

4. The Claimant, by ET1, received on 19<sup>th</sup> August 2020, commenced his claim against the Respondent health board and Ms. Hannah Thomas. The claimant asserts that he was unfairly dismissed, was the subject of disability discrimination, that the Respondent failed to make a redundancy payment and that he was owed for other payments. In short, the claim relates to allegations that the Claimant raised issues around matters of health and safety in the workplace and that as a result of those matters, he is entitled to pursue the claims against Respondent. He details in his claim form issues relating to conversations that he purports to have had with various staff members.
5. The ET3 disputes liability in respect of each of the claims. It is asserted that the Claimant was engaged by way of locum via an umbrella company. It is stated that the Claimant was in a temporary engagement for the purpose of filling a gap in service. The Respondent raises within the ET3 that the status of the engagement is in dispute. Ultimately, the Respondent asserts that the Claimant was not an employee, and that the relationship was terminated on account of a breakdown of the relationship, a refusal to work under other members of staff, staff complaints, the Claimant undermining advice and guidance in place at the time and spending time on non-clinical work.
6. The matter came before EJ Moore on 26<sup>th</sup> July 2020. It was clearly stated that if the Claimant wanted to bring additional claims, then he would have to apply to amend. No application was pursued. At paragraph 6 of the CMO, it is outlined that the Claimant states that he was entitled to unpaid wages for the remainder of a fixed term contract. Paragraph 7 of the CMO requires the Respondent to clarify their position regarding worker status. A number of directions were made timetabling through to a preliminary hearing to consider the issues listed at paragraph 9 of the order.
7. In August 2021, in consideration of the disclosure and evidence, the Respondent confirmed that the Claimant was a worker but continued to dispute that he was an employee.
8. Accordingly, the matter came before me to consider those issues at paragraph 9 of the CMO. A reading of the Tribunal file demonstrates that there have been multiple applications by the Claimant on a variety of issues that appear to have been dealt with on an administrative basis. I do not rehearse them for the purpose of this decision. In addition, a flurry of correspondence relating to the bundle was received by the ET in the days and weeks before the hearing.
9. It was necessary to consider several preliminary points prior to the hearing commencing. I will not rehearse those at this juncture as they were the subject of detailed oral reasons. I determined that the matter should proceed based on the evidence available within the bundle. I rejected a request by the Claimant to postpone the hearing given the failure on the Claimant's part to adduce medical evidence and material relating to his

alleged disability discrimination claim. It was also clarified that the Claimant did not seek to amend his claim at the start of the hearing.

10. In consideration of the preliminary issues, I have had regard to a bundle running into 1882 pages. I have also considered the witness statements of the Claimant, Mr Morgan, Mr Walpole and Ms Thomas.
11. During the course of cross-examination of the Claimant, it became apparent that his case was that he did not become an employee until around March 2020. I consider this issue later in these reasons, but it was for this reason that the Respondent made the entirely appropriate decision not to call Mr Morgan to give oral evidence. Accordingly, I attach no weight to his evidence.
12. I have also had regard to additional material provided by the Respondent from the Charteris website to demonstrate the nature of an umbrella company. The Claimant consented to the addition of the document into the bundle. I am satisfied that it was necessary for the document to be admitted as it appeared to be potentially relevant to issues that I must determine. Further, I ensured that the Claimant had sufficient time to consider the document before commencing.
13. The Claimant subsequently made his own request to rely upon additional documentation. The Claimant provided a number of pages of information printed from the Liaison website detailing a TempRE case study. The Respondent did not seek to oppose the documents being admitted.

## The Law

14. Section 230 of the Employment Rights Act 1996 defines an employee as follows:-

Section 230(1) states “in this Act “employee” means an individual who has entered into or works under (or where the employment has ceased worked under) a contract of employment.

Section 230(2) states that In this Act a contract of employment means a contract of service or apprenticeship, whether express or implied, and if it is express whether oral or in writing.

15. In **Ready Mixed Concrete vs Minister for Pensions and National insurance (HC) 1968** three questions were set out to be answered in defining a contract of employment.

- (a) Did the worker undertake to provide his own work and skill in return for remuneration;
- (b) Was there a sufficient degree of control to enable the worker fairly to be called an employee;
- (c) Were there any other factors inconsistent with the existence of a contract of employment.

16. Following Ready Mix Concrete, the courts have established that there is an irreducible minimum without which it will be all but impossible for a contract of service to exist. This is widely recognised to entail control, personal performance and mutuality of obligation.
17. Section 230(3) of the Employment Rights Act 1996 (“ERA”) defines a “worker” as:
- “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.”
18. All employees are workers. However, the second limb of the definition is much wider in scope and includes some people who are not nominally self-employed. Therefore, for an individual to lay claim to worker status, he or she must first show there is some form of contract or agreement with the employer. To be a worker an individual must do, perform personally, the work or services required under the contract. Again, to qualify as a worker the other party of the contract must not be a client or customer of any professional business undertaking carried on by an individual.
19. A worker is an intermediate class of protected worker made up of individuals who were not employed, but equally could not be regarded as carrying on business as self-employed.
20. The Tribunal reminds itself we are not bound by the label the parties attach to the relationship put on the agreement. The parties cannot, by agreement, fix the status of their relationship. This is an objective matter to be determined by an assessment of all the relevant facts, it is the totality of all of the evidence. What is the reality of the true picture? And if the relationship is not actively reflected in those documents that purport to recite the relationship as self-employed then the Tribunal is entitled to interpret the relationship is that of a worker. One should also consider whether there is a disparity in bargaining powers of the parties.
21. In this case, it is agreed by both parties that the Claimant became engaged by the Respondent as an agency worker. In consideration of whether this relationship changed as asserted by the Claimant, I have regard to the principles in the case of **James v Greenwich London Borough Council 2007 ICR 577, EAT**, in which Mr Justice Elias, then President of the EAT, laid down guidance to assist tribunals in deciding whether to imply an employment contract between an agency worker and an end user, namely:
- i) the key issue is whether the way in which the contract is performed is consistent with the agency arrangements, or whether it is only

consistent with an implied contract of employment between the worker and the end-user;

- ii) the key feature in agency arrangements is not just the fact that the end-user is not paying the wages but that it cannot insist on the agency providing the particular worker at all;
- iii) it will not be necessary to imply a contract between the worker and the end-user when agency arrangements are genuine and accurately represent the relationship between the parties, even if such a contract would also not be inconsistent with the relationship;
- iv) it will be rare for an employment contract to be implied where agency arrangements are genuine and, when implemented, accurately represent the actual relationship between the parties. If any such contract is to be implied, there must have been, subsequent to the relationship commencing, some words or conduct that entitle the tribunal to conclude that the agency arrangements no longer adequately reflect how the work is actually being performed;
- v) the mere fact that an agency worker has worked for a particular client for a considerable period does not justify the implication of a contract between the two; and
- vi) it will be more readily open to a tribunal to imply a contract where, like in *Cable and Wireless plc v Muscat 2006 ICR 975, CA*, the agency arrangements are superimposed on an existing contractual relationship between the worker and the end-user.

22. In consideration of whether the Claimant is disabled, I must have regard to the principles contained within section 6 of the Equality Act 2010. Disability is defined as a physical or mental impairment which has a substantial long-term adverse impact on the individual's ability to carry out normal day to day activities.

### **Factual Matrix**

23. As aforementioned, I am grateful for the clarification made by the Claimant relating to his employment status from June 2019 until March 2020. It appeared that the Respondent, and the Tribunal, had taken the view from the documents that the Claimant's case was focused on the assertion that he was as employee from the commencement of the relationship between the Claimant and Respondent in June 2019. During cross-examination, the Claimant accepted that this was not the position and he agreed that he was not an employee of the Respondent. He now asserts that he was an employee following the discussions that took place in March 2020. Given this concession, I need not make any detailed findings of fact on employment status during the period from June 2019 to 31<sup>st</sup> March 2020. The Claimant states that he was an employee from 1<sup>st</sup> April 2020. The Respondent accepts that he was a worker. As a result of the Claimant's clarification, I need not consider the period in the same level of detail with which I may have needed to if the Claimant's case was that he was employed from June 2019. I will though outline a chronology of events given

that the pre-March 2020 circumstances are relevant to the context in which the Claimant asserts that he became an employee.

24. The Claimant came to be engaged with the Respondent following an inquiry for locums made by the Respondent's Operational Lead Physiotherapist on 30<sup>th</sup> May 2020 to Global Locums. She made a broad request for anyone interested in front of house, medical rehab or in the community. This request can be found at page 73 of the bundle. The Recruitment Consultant at Global Locums subsequently sent the Claimant's CV to the Operational Lead Physiotherapist and thereafter on to Hannah Thomas, Clinical Lead Physiotherapist, as per page 72 of the bundle.
25. Following clarification on several points as per emails at page 74 and 75, it was established that the Respondent would seek to secure the Claimant's services and discussion was entered into on remuneration and pay. It is agreed that the Claimant was not an employee at the time of commencement in June. The emails found at paragraph 78 to 82 overwhelmingly support this position. Discussion takes place regarding rate of pay, the rate refers to payment of VAT and NI, and there is reference to a request that the Claimant be paid through an umbrella company. Whilst the Respondent would set out a job post on TempRE for allocation purposes, (TempRE being the system utilised to manage and allocate locums), it is abundantly clear that the material at the time demonstrates that the Claimant was an agency worker.
26. A slightly peculiar feature about this case is that the Claimant accepts that he has previously had issues with TempRE and requested that he be paid through an umbrella company given his mistrust of the system.
27. A series of questions were put to the Claimant regarding his relationship with Globe Locum. It was suggested that he would have been sent terms and conditions by Globe Locum. The Claimant's response was that he was not sure, that he could not recall. It was put that this type of company would have sent a pack of documents, the Claimant said that he had looked and did not come across anything. Mr Walters, on behalf of the Respondent, put that if he were sent this material, then it would clarify the nature of the contract between Charteris and the Claimant. The Claimant was vague in his responses and his inability to recall the documents that he had been sent.
28. The Claimant was also vague on the commission/fee that the agent would have received and stated he did not know what was signed at the time. I was struck by the Claimant's inability to recall the circumstances that led to the contractual arrangements at the commencement of the relationship with the Respondent. The Claimant presents as a man that has an exceptional recall of his version of events and was astonishingly well versed in the material that has been placed before the Tribunal. Such understanding extends to his knowledge of HMRC guidance and employment regulations. This is a man that in response to almost any aspect of the evidence given by the Respondent's witnesses was able to immediately draw upon the mountain of material and refer the witness to a document or correct a witnesses account if they were, in the Claimant's eyes at least, inaccurate in respect of the evidence given. Yet on this point, the formation of the

contractual arrangements through an agency for the engagement with the Respondent, his evidence was that he could not recall. It was a similar pattern in respect of other issues that were put to him on areas that would potentially undermine his case. On occasion, I consider he presented as deliberately obtuse or evasive, he was difficult –this presentation seemed only to occur on difficult subjects that had the potential to undermine his position.

29. I have been assisted in considering the terms of the initial engagement by having regard to three documents in particular. Firstly, in absence of the Claimant's recollection regarding the terms and conditions, the compliance confirmation form at page 67; secondly, the assignment confirmation at page 85 and, thirdly, the document that was added to the bundle from the website of Charteris. Those documents reiterate what is now accepted, namely, that the relationship was one of agency worker when the Claimant was first engaged by the Respondent. At page 85, the assignment confirmation states that:

"I hereby confirm that I will undertake this assignment through Globe Locums for the duration of this contract until its conclusion. If I am unable to undertake this position or should I wish to terminate the contract I will notify Globe with 2 weeks' written notice. I also hereby acknowledge that before I undertake my contract, I will ensure that my compliance documents are up to date and that I fully comply with Government guidelines as directed by the Government Procurement Service Framework."

30. In my view, this page clarifies the nature of the contractual relationship with the agent and the circumstances prior to March 2020 when the Claimant alleges that his was made an employee. This sits alongside the explanatory information from Charteris's website entitled "Five Reasons to Use an Umbrella Company".

31. As I have previously mentioned, the Claimant presented in an evasive manner in some respects. He has, on occasion, taken positions in his oral evidence that appears in direct contrast to the weight of contemporaneous evidence available within the bundle. An example being the correspondence at pages 78 to 82, in particular, at page 80. The Claimant was adamant that the suggestion that he be paid via an umbrella company was made by his agent and made in conjunction with the agent making enquiries in his own interest regarding payment rate. It was put to the Claimant that the agent was simply acting on the Claimant's behalf. The Claimant rejected this asserting that the agent was acting in his own interests or those of the Respondent. The Claimant's interpretation, in my view, simply does not fit with a plain reading of the contemporaneous documents on this issue. It represents an example of the Claimant taking a peculiar and irreconcilable stance when viewing the documents. Those documents demonstrate to the Tribunal, and I find, that the agent was acting on behalf of the Claimant in trying to get him placed with the Respondent and paid by an umbrella company at the Claimant's request. This is consistent with Claimant's description that he had difficulties regarding payment in his previous placement and has stated openly that he wanted to be paid via an umbrella company.

32. From June 2019, I have an abundance of evidence within the bundle that assists the Tribunal in understanding the way the Claimant was paid and booked for certain jobs. I need not rehearse it in detail given the position taken by the Claimant in accepting that he was not an employee until he says a change of circumstances took place in March 2020. In brief, page 96 to 155 provides various examples of the Claimant being booked onto shifts using TempRE. I have had sight of the emails from TempRE confirming the bookings and shift details to include date, number of hours and Claimant's details.
33. It is accepted that, in February 2020, there was a change in the Respondent's requirements in terms of utilising umbrella companies and payments for locums. That change is helpfully outlined in an email at page 200 to state that the Health Board have mandated that Agency Direct Engagement be used for all locum bookings. It is said that this was communicated to all suppliers in February and appears to be an attempt to standardise procedure across locums. The email states that the Claimant will need to be moved over to Agency Direct Engagement (ADE). The basis for the change appears to be tax and efficiency savings.
34. It is at the end of March, around the time of these emails, that the Claimant states that it was confirmed that he would remain on a fixed term contract as an employee. At paragraph 68 of the Claimant's statement, he says that he discussed his contract coming to an end with Hannah Thomas on or before 20<sup>th</sup> March. It is asserted that Hannah Thomas did not want to lose him and that she had intended on offering a role of Respiratory Specialist Physiotherapist for Covid wards. This Claimant alleges that this was discussed in some detail and that it was Hannah Thomas's intention to employ the Claimant as Lead Covid Physiotherapist. It is alleged that a discussion took place around his housing needs and, in particular, that he would need his own accommodation. The Claimant's account at paragraph 76 is that Hannah Thomas confirmed that he would be employed "until at least Covid is over" and that she was supportive of the Claimant's predicament. It is alleged that Hannah Thomas said that he would be "working for us now" and that hours would need to be aligned with other staff. He states that an unequivocal agreement had been reached for an indefinite fixed term employment that he would be working for the health board in a new position.
35. The Claimant alleges that he contacted the agent at Globe Locums to explain the position. He says that the agent explained that he would need to contact the hospital to finalise the release. I have no contemporaneous evidence of such a request having been made or that this discussion took place.
36. The Claimant outlines in his statement that Mr. Walpole congratulated him on the role. He says that Mr. Walpole informed him he would be paid through TempRE.
37. The formulation of an employment contract is disputed by Mr. Walpole and Ms. Thomas. Mr. Walpole provides his account at paragraph 16 onwards of his statement. He says that the Respondent was desperate for locum staff, that as far as he was aware the Claimant had skills that would be needed



during Covid, the Claimant wanted to get paid more and the Respondent needed to keep him. Accordingly, he states he understood that an agreement was reached for a higher rate of pay so to ensure that he remained with the Respondent. He details that the change of payment rate caused some issue around engagement at the new rate and so a new engagement was entered on TempRE. He explained in oral evidence, alongside his written evidence on this issue, that the decision to enter “Respiratory Specialist Physiotherapist” was essentially an arbitrary entry that, for some individuals, would simply be a name or a general description. He says nothing should be read into the change of job on the relevant forms. The Claimant says this change of name supports his position that his role had changed and that a contract was entered into.

38. Ms. Thomas details her version of events at paragraph 19 of her statement. She says that at the start of Covid, the Claimant decided to move out of shared accommodation, and this was his reason for requesting increased pay. She states that the Claimant explained that he felt a pay increase was warranted in line with other pay rates. Ms. Thomas says that the other option was that he would move back to Ireland. This piece of evidence sits with the Claimant’s own evidence that he was considering a move back to Ireland earlier that year. Ms. Thomas says that the role did not change, and she is not sure where the reference to “Respiratory Specialist Physiotherapist” has come from.

39. In consideration of the discussions at the time, and the Claimant’s assertion that a fixed term contract was agreed up, I have particular regard to the following surrounding material:

- a) At page 212 of the bundle, in an email between the agent and the Respondent’s staff, the agent states “I have just had a conversation with Dillan around placement and he mentioned his current shift expires on 31<sup>st</sup> March and is keen to continue past this date”. This email is sent on 20<sup>th</sup> March, the day of or just after the alleged conversation that the Claimant says he had with Hannah Thomas regarding a fixed term contract. There is no reference to an agreement being reached to move to employee. Indeed, quite the opposite, the request is for an increased rate of pay. This fits into the account given by Hannah Thomas. There is no reference to a change of contractual arrangements as the Claimant now asserts.
- b) I consider that the email at 206 offers insight into Mr Walpole’s understanding at the time – he states that the Claimant continues to be employed through an umbrella company – no reference is made to the alleged conversation around commencing work as an employee. This is read alongside page 200 that states that the “locum is currently engaged with us through an umbrella company... he has agreed to stay on at a slightly improved rate, but the agency can’t see the extra shifts put on”. This fits into the oral account given by Mr Walpole. The email chain outlines that the Claimant would need to move to an ADE model and that as an exception, they will permit continued payment through the umbrella. I consider that the email chain, read in totality, gives an indication that the intention on the part of the Respondent was an

extension to the pre-existing arrangements albeit with a change of pay rate, as requested by the Claimant.

- c) Following the above email chain, there is another from Mr Walpole at page 216 on 1<sup>st</sup> April confirming that following the issues around new rate and job, the shifts have been booked on until the 1<sup>st</sup> May. This fits into the pre-existing pattern that the Claimant's shifts would be booked on in blocks of time normally one month in advance. This is evidence to suggest that the status quo would continue.
- d) The Claimant argues that there was no ongoing involvement with Global Locums post formation of his contract with the Respondent in March 2020. I struggle to accept this given the document at page 231. Globe Locum, the very agency that placed the Claimant, have made available a placement confirmation for dates 14<sup>th</sup> to 17<sup>th</sup> April with this example confirming rate, hours, pay rate and has agency clearly marked by Globe Locum. This is in almost exactly the same format as the documents outlining the shifts undertaken prior to March 2020. In my view, this is indicative of a continuing relationship between Globe Locums and the Claimant post March 2020. The Claimant asserts that this supports his account as there is a change of job title and rate of pay. I will come back to this in due course and deal with the job title, but I consider that this email is further documentation in support of the Respondent's position.
- e) The document at page 231 also indicates that the pay rate is inclusive of holiday pay – a clear indication of the intention of the Respondent and the understanding of Globe Locums at the time of this document being sent. The pay being inclusive of holiday adds further weight to the Respondent's assertion that the status quo continued from 1<sup>st</sup> April 2020.
- f) The Claimant repeatedly asserts that there is overwhelming evidence to support his position. This assertion is not borne out by the contemporaneous documents available to me. He asks me to consider that the tenancy agreement, being six months in duration, is a clear indication that he was going to be staying for at least that period. In my judgment, the document only serves to demonstrate that the Claimant signed a six-month tenancy and nothing more. The Respondent acknowledges that the Claimant told them he was seeking different living arrangements but disputes the assertion made by the Claimant that the Respondent, and in particular, Hannah Thomas, made several direct representations to the CEO to secure his former flat. There is no documentary evidence to support this assertion and I attach significant weight to the evidence of Hannah Thomas in denying such steps were ever taken. She appeared completely baffled by the suggestion that she would have been able to pull such strings so to secure a former flat of the CEO.
- g) The Claimant states that the change of job title is particularly relevant. He says that this is a clear indicator that his role was changing, and he was to be employed as per the discussions he says took place at the time with Ms Thomas. But this assertion stands contrary to the detailed and persuasive evidence of Mr Walpole. He explained that the reference

to Respiratory Specialist Physiotherapist DE is little more than a title allocated that was unique to the Claimant. I have regard to his evidence that for some individuals there would just be a name entered into this field of the relevant form. His explanation sits alongside the contemporaneous email chains regarding the difficulties encountered placing the Claimant on a new rate at his own request. I consider Mr Walpole to have been a compelling, consistent and persuasive witness that presented as an individual that had no axe to grind and simply attended at the Tribunal to assist me in making my determination. I accept his evidence on this point and find that, on balance, the reason for the name change is the issues that arose from the pay change and code change in light of Covid. This finding is supported by the emails that reinforce Mr Walpole's evidence. I therefore reject the Claimant's assertion that the job title change demonstrates a change of employment status. In the circumstances, I consider that the change of job title does not serve to act as an indicator of a change of employment status.

- h) I also have regard to the fact that the Claimant continued to be paid post March 2020 in the same mechanism by which he was paid pre-March, through the umbrella company. Mr Walpole explained that, if the Claimant were employed, he would be paid through payroll alongside other employees. He was not paid this way and in my view, this is another feature in favour of the Respondent's position.

40. In assessing whether the discussions that took place with Ms Thomas led to a verbal contract, I have regard to the general manner in which the Claimant gave his evidence. As I have already commented on in respect of the request to be paid by an umbrella company and those circumstances relating to the contract with Charteris and relationship with Globe Locum, the Claimant can present as evasive and, in some circumstances, appears to argue against the weight documents that appear to run directly contrary to his case in black and white. On this issue, similar to the request to be paid by the umbrella company, the Claimant argues against the weight of the documentary evidence but does so also against the evidence of Mr Walpole and Ms Thomas.

41. I have already commented on the quality of Mr Walpole's evidence. I make the same observations regarding the evidence given by Ms Thomas. She presented as an individual that was dismayed to be presented with allegations that she had lied, destroyed evidence, fabricated events and embarked upon a course of conduct to hide what the Claimant says was an oral contract. In my judgment, both witnesses have given clear and compelling accounts relating to the arrangements in March 2020 into April 2020 and those accounts, vitally, are supported by the documents I refer to among others.

42. Hannah Thomas gave oral evidence regarding the mechanism that would be followed in the event that an individual was to move from agency worker to employee. She explained that there would need to be business notification, justification submitted to senior management, approval at management level, there would be the creation of a job advert, uploading of job description with involvement of clinical lead, it would be submitted, go to

advertising stage with a shortlist, interview and hiring. She described that this would take a minimum of four weeks. I accept her explanation as a clear and credible overview of the creation of a job role. It stands to reason that such a mechanism would create reams of documents, it would involve multiple individuals and there would be a clear paper chain. Further, in circumstances whereby an individual moved from agency to employee, a payment would be made to the agency and there inevitably be communication taking place between agent and health board. There is nothing within the bundle to hint that this process was following. There is nothing to suggest a payment was made to the agency. The overwhelming weight of the contemporaneous documents that I have referred to indicate the direct opposite.

43. The respondent's position is clear and consistent on this issue. It is supported by the weight of the documentary evidence. In stark contrast to this is the Claimant's position. His oral evidence was confusing, it was convoluted and at times the Claimant appeared to be overwhelmed by his own unwavering certainty that he was right. In my judgment, this unwavering certainty in the face of contemporaneous documents demonstrated a clear lack of insight regarding the true meaning behind the documents to which he was referred.
44. In considering the Claimant's suggestion that the Respondent has embarked upon a conspiracy to hide the truth, I have regard to the fact that there is nothing in the bundle by way of contemporaneous documentation to support this assertion. I have not been referred to any partially deleted email chains, no suspicious redaction, missing email attachments, or other evidence to support the suggestion that material was being withheld. The Claimant has taken me to various minutes of meetings or evidence within disciplinary investigations, but it appears to me that any inconsistencies referred to by the Claimant are extremely minor in nature. For example, relating to dates of knowledge in terms of a witness's awareness of the chronology rather than the core relevant features of their evidence. The Claimant has attached credence to extremely minor inconsistencies and engaged in a process of attempting to conjure a conspiracy where there is, in my judgment, nothing to support such a suggestion.
45. Given the wealth of documentation created, it would be surprising if such a conspiracy could remain out of view from other professionals and the view of the Tribunal. It would also have to involve multiple people engaging in a course of conduct designed to hide the true extent of the contractual relationship. This duplicity would have needed to have been agreed between the various employees of the Respondent at an extremely early stage to try and hide such behaviour and, it is, in my view, inherently unlikely having heard directly from those employees in oral evidence. Further, I have not been presented with any evidence of motive as to why Mr Walpole and Ms Thomas would lie under oath and engage in such behaviour. I struggle to see any tangible benefit to either.
46. Taking into account all of the factors I have mentioned above, and having considered the totality of the evidence, I am not satisfied, on balance, that the parties entered into discussion in March 2020 and agreed that a contract of employment should commence. I reject this contention and prefer the

evidence of Ms Thomas and Mr Walpole for the reasons I have given. Further, I will briefly deal with the suggestion that Ms Thomas and Mr Walpole having engaged in a pattern of lies and fabrication. The Claimant has made repeated allegations of serious professional misconduct against them and the Respondent more generally. In the context of the issues that I must determine, I reject the Claimant's suggestions entirely. The Claimant's spurious allegations have been completely undermined and rejected by this Tribunal. For the benefit of both Ms Thomas and Mr Walpole, I find as fact that both individuals have not engaged in a process of lies, manipulation and fabrication as alleged by the Claimant. The events alleged by the Claimant did not occur.

## Conclusions

### Employment Status

47. For the reasons outlined above, I am not satisfied that a contract of employment existed between the Claimant and the Respondent. I consider that the Claimant was engaged by the Respondent as an agency worker from June 2019 to March 2020. I am not satisfied, for the reasons outlined above, that a verbal discussion took place between the Claimant and the Respondent's employees in March 2020 that would have changed the pre-existing relationship and created a fixed term contract of employment as asserted by the Claimant. The status quo continued into April 2020 until the date of termination.
48. I move on to consider whether this is the type of case in which it is necessary to imply a contractual relationship as considered in the case of **James v Greenwich London Borough Council 2007 ICR 577, EAT**. In my view, the Claimant's performance of the role in which he worked is entirely consistent with agency arrangements as per my overview of the way in which the bookings were made through a third party, bookings were allocated to the Claimant and worked in relatively short periods before additional bookings were added as the expiry of the booking period approached. The Claimant was paid through the agency and liaised with the agent when additional bookings and/or changes to the rate or bookings were made. The key features of agency arrangements exist in the Claimant's circumstances. In my judgment, it is not necessary to imply a contractual relationship as to do so would be entirely inconsistent with the actual and genuine arrangements that were being implemented for the benefit of both parties at the time.
49. Accordingly, the Claimant was not an employee at any stage during the relationship with the Respondent. I find that the Claimant was a worker for the totality of the period during which services were provided to the Respondent.

### Disability

50. I briefly move on to consider the issue of disability. As outlined above, the Claimant placed no evidence before the Tribunal in respect of disability. This was despite various directions having been made for the provision of

such evidence and a number of extensions affording additional opportunities for the Claimant to comply. The Claimant's application for a postponement was dismissed at the outset of the hearing and I determined that it was necessary to proceed on the evidence available to me. There is a lack of evidence to support a finding that the Claimant was disabled for the purpose of the statutory definition. Accordingly, I find as fact that the Claimant was not disabled.

Breach of Contract/Unpaid Wages

51. My understanding of the Claimant's case is that the claim for unpaid wages/breach of contract emanates from his assertion that he is entitled to payment for the outstanding period of the fixed term contract that he argued existed with the Respondent. I have rejected the contention that he was engaged as an employee under a contract of employment as alleged. Accordingly, my understanding is that this claim will now need to be dismissed, however, I did not clarify this point with the Claimant at the hearing. It will therefore be necessary to clarify the position at the case management hearing and dismiss the claim in the event that my understanding is correct.

Employment Judge **G Duncan**

Date 13<sup>th</sup> June 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 14 June 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche