Case No: 6000676/2023

EMPLOYMENT TRIBUNALS

Claimant: Miss K Holt

Respondent: Langley & Brading Ltd

HELD AT: **Leeds By CVP** **ON:** **1 November 2023**

BEFORE: **Employment Judge JM Wade**

REPRESENTATION:
Claimant: In person
Respondent: Mr J Boumphrey, counsel

Note: The Judgment below was provided orally in an extempore Judgment delivered on 1 November 2023, which was sent to the parties on 7 November 2023. A request for written reasons was received from the claimant on 6 November 2023. These reasons are provided in accordance with Rule 62 and in particular Rule 62(5) which provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the Judgment given on 11 August 2023 was:

JUDGMENT

1 The claimant's unfair dismissal complaint is struck out, there being no reasonable prospects of the claimant showing it was not reasonably practicable for her to have presented her complaint in February, March or early April 2023.

2 The claimant's relationship with the respondent from 9 May 2022 satisfies Section 83(2)(a) of the Equality Act 2020 and complaints from that date are not struck out.

3 There are not no, or little, reasonable prospects of the Tribunal thinking the period up to and including 14 April 2023 is the just and equitable period within which the claimant may present the last in time of her Equality Act allegations, namely that around 17 September 2022 Mr Brading said they needed to discuss the claimant going on maternity leave early.

4 The Equality Act complaints therefore proceed to final hearing (see further Orders today), unless otherwise resolved, and it will be for the Tribunal to decide the time limit issues set out at paragraph 2.1 of the list of issues attached to orders sent to the parties on 19 July 2023.

REASONS

Introduction, issues, hearing and evidence

1. The claimant is a hairdresser who resigned from the respondent salon on 20 September 2022. It is not in dispute that any contract with the respondent ended on that date. The claimant had worked at the salon since 2013. She resigned mid way through her pregnancy. Her baby was then born prematurely on 20 November 2022.

2. ACAS conciliation started on 22 September (Day A) and ended on 3 November 2022 (Day B). The received date on the ET1 included in today's hearing file was 14 April 2023. In fact the claims were not validly presented until 3 May 2023. During the hearing both the respondent's counsel and I had understood the claim to have been validly presented on 14 April - there was no notice of rejection in the bundle provided. That is also how submissions were put for the respondent. In approving these reasons it has become apparent that is not the valid presentation date and I address that below.

3. The claimant acts as a litigant in person. The claims were identified at a case management hearing on 13 July 2023 and permission to amend was given to add sex and disability discrimination to existing complaints of pregnancy related discrimination and unfair dismissal. There was no appeal or reconsideration application in connection with those decisions, nor any request for written reasons. Any analysis of the limitation aspect of amendment was not therefore before me, but the Judge had identified the claim presented date as 3 May 2023.

4. The Judge also set out the complaints to be tried, subject to today's hearing, the first of which was an allegation that on 17 March 2022 the claimant was

urged “not to get pregnant this year”. The next allegation is on 4 May 2022, after announcing her pregnancy, the claimant alleges the respondent tried to put her off having the baby. The remaining 13 allegations relate to a period when the respondent says the claimant was self employed, from 9 May 2022.

5. The claimant relies on autism as her disability.

6. The issues to decide today were identified by the Employment Judge as follows:

   6.1. To decide if the claimant was an employee or worker of the respondent after 19 May 2022;

   6.2. To decide if the claimant has little or no reasonable prospects of showing that her claims are brought in time or of persuading the Tribunal to extend time for the presentation of her claims. If the judge decides that the claimant has no reasonable prospects of showing that her claims are brought in time or that time should be extended, they are likely to strike out the claim. If they decided the claimant has little reasonable prospects of successfully showing that her claims are brought in time, or that time should be extended they may make a deposit order.

   6.3. To finalise the list of issues and make further case management orders.

7. It was clear, bearing in mind the respondent’s strike out/deposit application, that the first issue was the Employment Judge’s short hand for the respondent’s application that the claimant did not fall within Section 83 of the Equality Act 2010 and was, in fact, self employed at the time of most of her allegations. Given that the first issue involved making findings of fact, and the second issue involved a “prospects of success” analysis, it was convenient and in the interests of justice to reverse the order in which I addressed those two matters.

8. This hearing was originally arranged for 25 October, but on that day the respondent’s counsel was unwell and I granted a postponement application made orally on behalf of the respondent by its solicitor who was not in a position to conduct the hearing. Having read the papers I was able to reduce the time estimate and I gave directions for the timetable for today. As a litigant in person

it helped the claimant to know in advance the arrangements for this reconvened hearing and that she would have the opportunity to ask questions of Mr Brading, as well as being asked questions herself on behalf of the respondent.

9. The claimant had provided two witness statements for today; one addressing status, and the other addressing time limits. As to time limits she set out 12 paragraphs addressing potentially relevant matters and the statement was headed, "application for extension of time limits" and ended with her hope that "you find it just and equitable to extend the time limits to give me a chance to have my case heard". As to status, her statement provided a time line and a further 13 paragraphs of information about working hours, cleaning, one to ones, pricing, appointment of a locum, wages and so on.

10. I also had a witness statement from Mr Brading, a director of the respondent, on the matter of status, setting out ten relevant paragraphs and referring me to the relevant documents. Questions were conducted in an entirely appropriate way on both sides, respecting the need for questions to be clear and straightforward. I assessed both the claimant and Mr Brading as giving straightforward evidence to the Tribunal, doing their best to give honest answers, albeit at times Mr Brading's recollection failed him.

11. I had a hearing file of some 200 pages including agreements using templates of the National Hairdressers' Federation signed by the parties. The file also contained extracts from the claimant's medical records, her autism diagnosis and various other matters relating to payments, commission and interactions between the parties and others on the salon WhatsApp group, and direct messaging.

The Law

Time limits

12. Section 111(2) of the Employment Rights Act 1996 relevantly provides: "*Subject to the following provisions of this section an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal - (a) before the end of the period of three months beginning with the effective date of termination, or (b) within such other period as the tribunal considers*

reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months".

13. Section 111(2) is subject to the extensions given by virtue of ACAS conciliation where they apply. Section 207B (3) and (4) provide:

"*In working out when a time limit set by a relevant provision expires, the period beginning with the day after Day A and ending with Day B is not to be counted [the stop the clock provision];*

If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period;"

14. "Reasonably practicable" means reasonably doable.

15. Section 123(1) of the Equality Act 2010: "Proceedings on a complaint within section 120 may not be brought after the end of - (a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the Employment Tribunal thinks just and equitable."

16. The Section 123(1) period is extended by the ACAS conciliation provisions where conciliation is commenced within the relevant time either by the "stop the clock" provisions or providing a further month from the close of conciliation, in a similar way to the provisions affecting unfair dismissal.

17. Equality Act time runs from the date of the alleged discriminatory act (but lack of knowledge is relevant to the grant of an extension) - see Mr GS Virdi v Commissioner of Police of the Metropolis and another [2007] IRLR 24 EAT; In the case of a failure to make a reasonable adjustments - an omission - time runs from the date when a person does an act inconsistent with making the adjustment; or on the expiry of the period in which the person might reasonably have been expected to do it (Section 123(4)). See Matuszowicz v Kingston upon Hull City Council [2009] EWCA Civ 22 on the exercise of discretion in such circumstances.

18. The Tribunal also considers "forensic prejudice" in assessing the prejudice to each party from an extension of time - see Wells Cathedral School Ltd v Souter EA 2020 000801 JOJ.

19. Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 makes clear that the Tribunal is entitled to consider the merits of a claim in the exercise of its discretion.

20. The Act confers the widest possible discretion on the Employment Tribunal in determining whether or not it is just and equitable to fix a different time limit Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640. That said the power of the Tribunal is a discretion, to be exercised judicially, assessing relevant factors and the weight to be given in each case. The onus is on the Claimant to persuade the Tribunal that it is just and equitable to extend time. Robertson-v-Bexley Community Centre 2003 IRLR 434 CA.

21. If there are circumstances which would otherwise render it just and equitable to extend time, the length of extension required is not of itself, a limiting factor unless the delay would prejudice the possibility of a fair trial see Afolabi -v-Southwark LBC 2003 EWCA Civ 15.

22. In exercising discretion under the Section 123 (1)(b) case law has also established that the Tribunal must consider the length of, and reasons for, delay, and must consider the prejudice to both parties.

23. Section 33(3) of the Limitation Act 1980 contains a helpful list of other matters which might need to be considered (in personal injury and other claims with longer time limits), but also for the Tribunal to bear in mind if relevant:

    the extent to which the cogency of the evidence is likely to be affected by the delay;
    the extent to which the party sued had cooperated with any requests for information;
    the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;
    the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

Status

24. Section 83 of the Equality Act 2010 provides so far as material:

" *(2) "Employment" means—*

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

25. In its written strike out application the respondent relied upon Halawi v WDFG Ltd T/A World Duty Free [2014] EWCA Civ 1387 in advancing its case that by entering into a "Chair Rental Agreement" which identified the claimant as self employed, and gave her the right to appoint a locum, she fell outside the Equality Act definition.

26. The directions I give myself is as follows. Generally, people in commercial contracts are to be taken as agreeing to that in writing which they sign - the written document evidences their mutual intention at the time. In the employment context, the Tribunal must consider what was actually agreed between the parties, either as set out in the written terms, or, if it is alleged those terms are not accurate, what is proved to be their actual agreement at the time the contract was concluded. Unlike in commercial contracts, the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from the circumstances of the case, of which the written agreement is only part – see for example Uber BV v Aslam [2021] UKSC 5.

Conclusions on Limitation

27. It was ordered that I conduct a prospects of success assessment on the claimant's limitation case, rather than decide the issue myself. The fact that the claimant phrased her statement as an application could have permittied me to depart from the Judge's directions, but I did not consider it was in the interests of justice to do so in all the circumstances of this case. If I considered there were no reasonable prospects, then my assessment would amount to a final determination because the claims will be struck out. If not, the claims will continue and I consider it fairer to all, if that is the case, for a full Tribunal to decide that matter. I do not, therefore, find facts on limitation which may embarrass a subsequent Tribunal.

28. I record below matters which were discussed with the claimant today, arising from her statement. Together with that statement they are the reasons why, and the context in which, she did not submit her claim earlier. This will be the evidence on which she would rely at a final hearing.

29. As to her understanding of time limits, she believed she had at least a month from the issue of the ACAS certificate, because this is what the ACAS email said, but she considered this was unclear because it suggested she could have more time.

30. Before baby arrived on 20 November 2022, her partner helped her to claim maternity pay online, which involved the filling out of forms.

31. Similarly, she and her partner had drafted an email with the timeline and detail of the claimant's complaints. They did that sometime between 22 September 2022 and the ACAS certificate being issued on 3 November – again, before baby was born. The claimant expected the respondent to agree a resolution with her through ACAS.

32. The respondent conceded that until mid December 2022, it was not reasonably practicable to present a claim given that the claimant was coping with a premature baby and first bringing that baby home on 6 December 2023.

33. The claimant and her partner and new baby had a number of difficulties, including concern about housing, baby's health, and the claimant's health both physical and mental - all reasons she did not present her claim sooner – all present in January 2023. I consider there are reasonable prospects of the Tribunal concluding that once matters with baby had settled, it was the claimant's mental health and resilience, which was challenged on a number of fronts, which was the greatest reason she did not submit the claim soon after the end of January.

34. The claimant submitted her claim form on 14 April 2023, attaching the email of claim details that she had drafted in September 2022. The submission of the form did take long at all; the claimant had sought advice from a charity about what to do, perceiving injustice to have taken place.

35. The claim form was then rejected because she had entered the directors' names rather than the company name as the respondent, whereas the respondent's name appeared on the ACAS certificate. Receiving notice of rejection, she emailed the Tribunal on 3 May to request an amendment to the respondent's name to match the ACAS certificate. The amendment was granted and the claim accepted as presented on that date, 3 May 2023.

36. The claimant then submitted a second claim on 10 May 2023, but withdrew that on the basis that the first claim could proceed. Thereafter she made amendment applications, which were granted at the last hearing, having had further help and/or done more research.

37. I have to consider, taking into account section 111(2), the prospects of a Tribunal considering it was not reasonably practicable for the unfair dismissal complaint to have been presented before 30 January 2023 – the limitation date - extended by the stop the clock provisions. I consider there are such prospects, taking into account the particular matters of combined strain on the claimant and her partner in January. Thereafter, I consider there are no reasonable prospects of the Tribunal considering it was not reasonably doable for the complaint to have been presented later in February, March or April 2023 (rather than when it was effectively presented which I now understand is 3 May).

38. That assessment takes into account that the Tribunal will know the relative ease with which the claim form was presented, albeit with the incorrect respondent name, on 14 April, because of the previously drafted details. It will also know of the wide availability through online research and the ACAS certificates process, that the claimant ought reasonably to have known of the need to act very quickly after 30 January. It will also know that ACAS is clear it is the claimant's responsibility to establish the time limit and seek to comply with it.

39. A Tribunal will ask in that context whether it was reasonably practicable - doable - for the complaint to have been presented within a further period, taking into account the claimant's particular circumstances, her understanding and the reasonableness of that understanding, and if so what should it identify as that further period?

40. I consider there are no reasonable prospects of the claimant's circumstances and reasons, challenging and difficult as they were, and discussed today, being so impaired throughout February, March and early April, that a Tribunal would conclude that such reasonable period should extend to 14 April (and less so 3 May 2023). The shortness of the task and its relative ease, given the particulars had previously been written are overwhelmingly against the claimant on a reasonably practicable test, notwithstanding her circumstances.

41. Identifying how a Tribunal might exercise its discretion to apply the Equality Act in these circumstances is more difficult, applying the principles above. The exercise of such a discretion is exceptional, but the conflagration of difficulties for the claimant were exceptional at the time. The hurdles to presenting her complaint were resilience and priority and determination – which were in short supply. There is also the overarching ambition of the Equality Act to eliminate workplace discrimination and the permissibility of taking the merits into account. Against the exercise of discretion are memory difficulties for witnesses, whether there can be a fair trial of whether words were said or not and their context, and that there is inherent prejudice for the respondent in losing a limitation defence. There may well be other matters which a Tribunal would take into account, having heard and determined findings of fact.

42. In short, I cannot say that there is no, or little reasonable prospects of the Tribunal exercising its discretion to fix an alternative limitation date, or a number of dates, depending on the Equality Act allegation concerned.

Status - Findings of Fact

43. The claimant began her career hairdressing in around 2008 as an apprentice at a salon where there were also colleagues who "rented chairs". That is, they were self employed hairdressers who operated from premises provided for them. She was employed for two years as an apprentice and then became a self employed "chair renter". She moved to the respondent's salon in 2013, again operating under a chair rental arrangement.

44. In 2017 the respondent salon had both employees and independent contractors and it wished to bring the contractor arrangements in line with the National Hairdressers' Federation ("NHF") Contracts, and to grow the salon.

45. That contract was structured as a licence to operate from the premises in return for a weekly chair rental fee - around £600 - together with a percentage of the stylist's turnover – between 2.5% and 17.5 % depending on that fee income. Sick days did not qualify for relief from the chair rental charge, but holiday or other days away from the premises did. There were explanatory notes to the agreement, which explained that the model agreement allowed for an Independent Contractor to appoint a Locum in their

    place for a temporary period – but the contractor remained liable for all matters under the agreement.

46. The agreement recorded in its background: "*It is the intention of the Independent Contractor and the Salon Owner to establish a business relationship other than that of employer and employee and to control their own actions, decisions and business affairs through observance of the following basic principles":*

    ….a) Each party to have ultimate command and authority over all aspects of their respective business or enterprise and to be readily identified as having such authority;

    ...b) each party to be responsible for the finances of their respective business or enterprise and to reap the rewards and losses arising therefrom.

    ...c) neither party to be solely obligated to, or reply or depend upon, the decisions of the other.

47. There then followed various standard definitions and terms with blanks for salon owners to complete. As to, "conduct of business" the contractor agreed "that he is self employed for the purpose of conducting a Hairdressing Business and is not an employee, servant, worker or agent of the Salon Owner and carries on, or is about to carry on, his own Hairdressing Business in the Chair Space".

48. Further, the agreement provdied that the parties, the Salon Owner and the Independent Contractor agreed that they, "shall each retain and service their own clients and although they may assist each other by providing, on request,

services to the clients of the other, they agree not to solicit the business of the clients belonging to the other...".

49. A year after that agreement came into force the respondent offered, and the claimant accepted, employment as salon manager from 30 April 2018 with a salary of £28,000 paid four weekly, pension and commission rates on turnover over £1800 a month at 30%. The claimant had additional responsibilities set out in a job description. Again, the respondent used the NHF Template Contract of Employment to confirm the terms of that agreement. The contract provided for five day a week working, Tuesday to Saturday.

50. From 7 January 2019 to 7 August 2020 the claimant was also a director of the respondent company. This appointment was a means of giving her a pay rise, and I understand from the evidence that as a "director' of the respondent salon, her services could be charged at a higher rate and other sums could be paid to her as a director. There was no evidence of her being provided with an outline of director's duties, or taking part in any decisions with others as a director. Mr Brading appears to have completed a tax return for the claimant for the tax year 20/2021 in June of 2022 when she was in difficulties. The line between friendship and business appeared blurred in this respect.

51. The claimant was diagnosed with autistic spectrum disorder in July 2021.

52. The claimant's net pay as an employee to 27 March and 24 April 2022 was around £1800, including several hundred pounds of commission. She was struggling with credit card bills and other outgoings living with her new partner, and was also struggling with her working week, taking holiday and unpaid sick leave.

53. In March 2022 she asked Mr Brading about how she could earn more, and they discussed the claimant going back to self employed because Mr Brading saw that as the only option – she was the highest paid stylist and he could not offer a higher salary - £28,000 or £14.36 an hour for a 37.5 hour working week, which was reflected in payslips at the time, plus commission.

54. There was then a lull in those discussions, and they picked matters back up towards the end of April 2022, with Mr Brading suggesting they go through the claimant's debt and outgoings and he would help with that. He asked her to confirm if she wanted to consider self employment, and she said, "i think so" and indicated that dropping Tuesdays and working a longer Wednesday would work for her. He asked for an email to that effect.

55. The only benefit to the claimant, discussed in their text messages, was to give her a cash flow boost in that she would not have to pay her tax and national insurance until much later – Mr Brading told her that date was January 2024 - and she could receive her wages gross in the mean time and could save for a rental deposit. In April 2022 that was very attractive – she said she just needed a few months to pay off debts and then she would start saving.

56. Much like the directorship in 2019, the dominant purpose which she and Mr Brading shared in implementing a second chair renting agreement in 2022, was to give the claimant more money in the short term without cost to the respondent. The dominant purpose was not that the claimant (and the respondent) each run their own businesses, despite that being recorded as a recital to which both parties agreed.

57. On 5 May 2022 the respondent agreed the claimant "could go self employed" the following week. The claimant had told Mr Brading she was pregnant on 4 May 2022. The new earnings regime came into effect on 9 May 2022 (17 or 19 May was a mistake).

58. The claimant and the respondent signed a new chair renting agreement using the NHF 2020 Chair Renting Licence Agreement template. Many of the provisions were substantially the same as those in the 2017 version, including the introductions included above. The fee structure was revised to mirror that of another "chair renter" at the salon. It provided for the respondent to receive 52.5% of the claimant's turnover as the "Service and Facilities Charge" and a four weekly licence fee or standing charge being payable by the claimant to the respondent of £260 or £65 per week. There was also provision for the Contractor to pay the salon the service charge on the fourth monday of every month, and the salon owner to, "r*ender to the Independent Contractor a statement in respect of any monies collected by credit card payment and due to the Independent Contractor and to make payment to the Independent Contractor within 14 days of receipt of the credit card statement by the Salon Owne*r.

59. Further the parties agreed that: *money paid by the clients in respect of the services provided by the Independent Contractor is the property of the Independent Contractor and any such money collected or held by the Salon Owner his servants employees or agents [shall be at the risk of the Salon Owner and] shall be handed over in full to the Independent Contractor or paid into an account of the Independent Contractor, as the Independent Contractor so directs, together with a written record of payments received without any deductions and without delay".*

60. The contractor was further required to disclose his gross turnover by the 10th of the month and to render to the Salon Owner an invoice for any monies payable by the Salon Owner to the independent contractor in respect of monies collected from the clients of the Independent Contractor for services or products (with specific details to be included).

61. The contractor was also required to have in place £2millon pounds of professional indemnity insurance, to act professionally and to supply his own products for use on his clients.

62. The notes included that everyone signing should be happy with the agreement terms and that the contractor should display a sign giving the contractor's address for service.

63. In a schedule to the agreement there was set out the equipment the respondent would provide. In the 2017 agreement this was simply, chair, mirror, hair dryer. In the 2022 agreement there was also added: straighteners, tongs, any other electrical styling equipment, any protective equipment, styling trolley, styling accessories – in short there was no equipment needed to be provided by the claimant at all and she was to have use of salon colours and the mixing area.

64. The agreement also defined a "Locum" as "*any person appointed by the Independent Contractor to act entirely in substitution for him during a period of temporary absence such person to be approved by the Salon Owner acting entirely within his discretion".* All rights and obligations were those of the

Independent Contractor and under a heading “Prohibition on assignment”, it was provided :”*This agreement is personal to the Independent Contractor who cannot assign, transfer, mortgage, charge or dispose of his rights under this Agreement in any manner whatsoever. The rights given to the independent contractor in this Agreement may only be exercised by the Indpendent Contractor and his Locum and neither the Independent Contractor nor the Locum is entitled to permit any eprson other than his clients and his employees or the Salon Owner’s employees to have access to the Chair Space”.*

65. As to the practical arrangements to implement the provisions of the agrement, there were very few changes from when the relationship was regulated by an employment contract. The claimant did purchase insurance from 1 June or 1 August 2022 (it was not entirely clear), and she did not generally work on Tuesdays and instead worked a longer Wednesday. Clients booked appointments online through the salon system or by telephone with the salon and cancelled in a similar way. On one occasion in July 2022 the claimant communicated directly with morning clients she had booked when she was unwell, but generally the salon staff re-arranged bookings in the event of illness or other absence. Equally, she continued being expected to cover other stylists’ absence if they were unwell.

66. If the claimant was not at work the salon would offer a booking with another stylist or ask the client if they wanted to wait for the claimant’s return. The claimant was expected to attend meetings and product training as when she was employed, and to ask Mr Brading before putting holiday dates in the diary. She was also expected to provide a covid clear test in connection with a covid infection - I consider this neutral and not indicative either way of status - the respondent was likely to need the required evidence for health and safety and insurance reasons as controller of the premises, whatever the status of the claimant.

67. There were also plenty of communications between the claimant and Mr Brading where it was abundantly clear that the relationship was not one in which the claimant had command and authority over her own business – she remained accountable to the respondent. She was not VAT registered. She did not provide invoices to the respondent (which was VAT registered and accordingly invoiced her with VAT for its charges). She continued to cash up for the respondent – if others were not there. She did not have custody of her own takings. Mr Brading could only see card payments remotely – cash accounting for the salong had to be done by someone physically present in the salon - and on occasion that remained as the claimant.

68. Rather than the claimant declaring her gross turnover, Mr Brading sent the claimant and one or two other chair renters their weekly earnings – that is he calculated their earnings from the respondent's electronic systems, applied the charges and so forth and sent by text he net sum which would be paid, which he described as self employed earnings – later providing a statement in writing. It was not obvious how the written statement related to the written agreement.

69. Finally, there was no intention or understanding on the part of the parties that the claimant could appoint a locum to attend on her behalf. When she was ill, Mr Brading did not suggest that – or ask about it – indeed he had never come across that happening with any chair renter. The opposite was the case – colleagues at the salon covered each other's ill health or other absence, and that arrangement continued to apply to the claimant. Indeed Mr Brading expressed considerable concern about having only one colleague working in a particular week, and that would have been the most likely time to have raised a locum - "send someone else – we are very short handed" - or words to that effect. He did not. He simply asked the claimant in strong terms to ask before booking holiday so that he could see who else was off – or words to that effect.

70. As far as clients were concerned, I find, accepting the claimant's evidence, that they did not know of the arrangements she was – her publicity material and photographs were advertised as the salon's work on Instagram and she had no publicity for herself as a separate business. If there was a sign announcing her status to clients, the claimant was unaware of it.

Status - conclusions

71. It will be apparent from the findings above that there were large parts of the chair renters' agreement which did not reflect the true intention of the parties. That is particularly so in relation to the locum provision – the inclusion of reference to a locum in the non assignment provision - but it is also apparent in the failure to operate the contract in the way it provided generally.

72. There was, in truth, an absolute obligation of personal service from the claimant to the respondent salon, and that is apparent in the communications between

the claimant and the respondent and the circumstances of those communications.

73. The indicators of non personal and business to business contractor status in the way the parties conducted themselves (other than the declarations within the agreement) were the claimant's insurance policy and the payment arrangement – the purpose of which was simply to give the claimant a cash flow advantage. Status for tax purposes is but one factor in any assessment of whether the claimant was a party to a contract personally to do work, and insurance is not inconsistent with such an obligation.

74. In my judgment the claimant was plainly within the third limb of Section 82(2)(b): there was no agreement for her to provide a locum or anything other than personal service. She has standing for her Equality Act complaints. Given my conclusion on Employment Rights Act limitation, it is unnecessary for me to determine whether she was an employee pursuant to a contract of employment.

Employment Judge JM Wade
6 December 2023