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# EMPLOYMENT TRIBUNALS

Claimant: Ms J Horn

Respondent: The International School of Screen Acting

## RECORD OF A PRELIMINARY HEARING

Heard at: East London Hearing Centre

On: 5<sup>th</sup> October and 5<sup>th</sup> November 2021

Before: Employment Judge Wilkinson

Appearances:

For the Claimant: In person (assisted by Mr T Horn, brother)

For the Respondent: Mr C Kennedy (Counsel)

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video by CVP. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.*

*Employment Judge Wilkinson would like to convey his apologies to the parties for the late promulgation of this judgment, resulting from his illness in the latter part of 2021 and the early part of 2022.*

## JUDGMENT

1. The Tribunal finds that the Claimant was at no time an employee of the Respondent.
2. The Tribunal finds that the Claimant was not a worker of the Respondent for the purposes of s230(3)(b) ERA 1996.

3. **Accordingly, in response to the first issue set out in the Order of Judge Burger dated 2<sup>nd</sup> August 2021, the Tribunal finds that the Claimant did not have worker or employee status to advance her claims and therefore the Tribunal has no jurisdiction to hear the Claimant's claims for unfair dismissal, disability discrimination, equal pay and unlawful deduction from wages and those claims stand dismissed.**
4. **The Tribunal having no jurisdiction to hear a free-standing claim of breach of contract where the Claimant is not an employee, the claim for breach of contract stands dismissed.**

## **REASONS**

1. This matter was listed for preliminary hearing on 5<sup>th</sup> October 2021, with a one-day listing. In the event, the Tribunal heard evidence over two days, 5<sup>th</sup> October and 5<sup>th</sup> November 2021 with submissions after close of evidence on day two.
2. The Tribunal heard oral evidence from the Claimant, Sarah Emiris and Alexander Hughes and from Mark Normandy for the Respondent.
3. The Tribunal was also furnished with a bundle of papers running to 831 pages, a bundle of authorities of some 108 pages, 48 pages of witness evidence and 19 pages of written submissions.
4. The Tribunal also received oral submissions at the end of day 2.
5. The issues the Tribunal was asked to decide were set out in the TPH hearing summary of EJ Burgher, dated 2<sup>nd</sup> August 2021, as follows:
  - 5.1 Whether the Claimant had worker or employee status to advance her claims;
  - 5.2 If the Claimant is an employee, whether she has 2 years continuous employment to proceed with claims for unfair dismissal and a redundancy payment; Whether the Claimant should be ordered to pay a deposit as a condition of advancing her equal pay claims;
  - 5.3 Whether the Claimant should be ordered to pay a deposit as a condition of advancing her unlawful deduction of wages claim;
  - 5.4 Whether the Claimant should be ordered to pay a deposit in respect of her Working Time Regulation complaints.

### Background

- 6 The Respondent is a vocational training provider, offering tertiary level training

to aspiring screen actors, from premises in London E3.

- 7 The Claimant was engaged by the Respondent to provide her services as a voice and movement teacher in October 2015. It is common ground that she was, at this point self-employed. She was contracted to provide her services in this capacity for an hourly rate of £25.00. She invoiced for her time and paid her own income tax and National Insurance.
- 8 In June or July 2018, the Claimant was offered the position of Associate Director. This role was essentially administrative and resulted in an additional payment of £500 per month. The Claimant continued to invoice for her services in the same way as before. The Associate Director role expanded over time after October 2018 and in due course the payment for this role increased to £1,000 per module and then to £1,500 per module. There were four modules each year.
- 9 It is the Claimant's position (per §5 of her Grounds of Claim) that by 7<sup>th</sup> October 2019 she had become an employee of the Respondent, being employed as Associate Director, with "attached teaching, audition and Site Management duties". In the alternative, it is the Claimant's case that she was a worker for the purposes of section 230(3)(b) Employment Rights Act 1996, set out below.
- 10 It is the Respondent's case that the Claimant was engaged throughout as a self-employed individual and that insofar as she was contracted to provide her services personally, she did so on the basis that the Respondent was a client or customer of the Claimant's business.
- 11 It being the Claimant's pleaded case, as set out above, that she had become an employee by 7<sup>th</sup> October 2019 and that she ceased to be employed on 8<sup>th</sup> September 2020, the Respondent avers that she does not have the required 2 years continuous employment to proceed with claims for unfair dismissal and a redundancy payment.
- 12 It is further the Respondent's case that, even if the Tribunal has jurisdiction to hear the Claimant's claims for equal pay, unlawful deduction from wages and breaches of the Working Time Regulations, the Claimant should be ordered to pay a deposit as a condition of being permitted to advance those claims.

## **EMPLOYMENT STATUS**

### **Law:**

- 13 The starting point is section 230(3) of the Employment Rights Act 1996, which provides:

*S230(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.*

- 14 Following *Windle v Secretary of State for Justice* 2015 ICR 156, the definition of worker status in s83 Equality Act 2010 is essentially the same as that in s230(3) ERA 1996 and the same test has thus been applied below in determining the Claimant’s worker status in respect of her claims under the Employment Rights Act 1996 and under the Equality Act 2010.

### **Contract of employment**

- 15 In determining whether a party is working under a contract of employment, the conventional starting point is the formulation of Mackenna J in *Ready Mixed Concrete(South East) Ltd v Minister of Pensions and National Insurance* (1968) 1 All ER 433, approved in the Supreme Court in *Autoclenz Ltd v Belcher and others* [2011] UKSC 41 at paragraph 18:

"A contract of service exists if these three conditions are fulfilled.

- (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.
- (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.
- (iii) The other provisions of the contract are consistent with its being a contract of service. ... Freedom to do a job either by one's own hands or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be."

- 16 Lord Clarke in *Autoclenz* identified three further propositions, which he did not consider contentious:

- i. There must be an irreducible minimum of obligation on each side to create a contract of service.

- ii. If a genuine right of substitution exists, this negates an obligation to perform work personally and is inconsistent with employee status.
  - iii. If a contractual right, as for example a right to substitute exists, it does not matter that it is not used. It does not follow from the fact that a term is not enforced that such a term is not part of the agreement.
- 17 In *Nethermere (St Neots) Ltd v Gardiner and anor* 1984 ICR 612, CA, Stephenson LJ considered that in order for there to be a contract of service, the three elements identified in the *Ready Mixed Concrete* case constituted an irreducible minimum. These have been widely characterised as:
- a) Control
  - b) Personal performance; and
  - c) Mutuality of obligation
- 18 The above is not to be treated as a definitive or exhaustive list, but provides context in which to identify the nature of the agreement between the parties. The relationship must be considered in the round and a determination must be reached on the basis of objective reality, standing back and looking at the relationship between the parties as a whole.

#### **Limb b worker status**

- 19 As set out above, this is a question of the applicant of s230(3)(b) ERA 1996. 'Limb b' worker status requires an obligation to provide services or do work personally to a party to the contract who is not a client or customer of any profession or business undertaking carried on by the individual.
- 20 The Tribunal is thus concerned with two questions:
- i. Was the Claimant obliged to provide her services personally?
  - ii. Was the Respondent a client or customer of the Claimant's business undertaking?

#### **Personal performance**

- 21 Per s230(3)(b), for a party to be considered to be a worker under the terms of the 1996 Act, they must be obliged to provide their services personally. It is not enough to demonstrate that they did in fact provide the services personally, there must be a contractual obligation to do so.
- 22 The question of the nature and effect of a right to substitute another worker to carry out the contracted work has recently been considered in the Court of Appeal in the matter of *The Independent Workers Union of Great Britain v The Central Arbitration Committee and another* [2021] EWCA Civ 952 (the *Deliveroo* case). Underhill LJ cited with approval the Judgment of Sir Terrence Etherton MR in *Pimlico Plumbers Ltd v Smith* [2017] EWCA Civ 51 on the effect of substitution agreements.

23 A party who enjoys an unfettered right of substitution is not obligated to provide their services personally and is therefore not a worker under limb b. The issue is whether the Claimant enjoyed an unfettered right of substitution.

24 Given the somewhat muddled state of the authorities on this question, Sir Terence Etherton MR provided the following analysis in *Pimlico Plumbers*, supra, at paragraph 84:

“Firstly, an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally. Secondly, a conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the conditionality. It will depend on the precise contractual arrangements and, in particular, the nature and degree of any fetter on a right of substitution or, using different language, the extent to which the right of substitution is limited or occasional. Thirdly, by way of example, a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance. Fourthly, again by way of example, a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance. Fifthly, again by way of example, a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance.”

25 The question of whether the Claimant was obliged to provide her services personally for the purposes of s230(3)(b) will thus depend on the terms of the agreement between the parties insofar as they relate to substitution or delegation by the Claimant of her duties.

Customer exception

26 The question at issue here is whether the Claimant, to the extent that she was obliged to provide her services personally, did so in circumstances in which the Respondent was a client or customer of a business undertaking of the Claimant.

27 The Tribunal was directed to paragraphs 17 and 18 of *Byrne Brothers (Formwork) Ltd v Baird* [2002] ICR 667. The relevant passages provide guidance on the question as follows:

17.(2) [Carrying on a] business undertaking" is plainly capable of having a very wide meaning. In one sense every "self-employed" person carries on a business. But the term cannot be intended to have so wide a meaning here, because if it did the exception would wholly swallow up the substantive provision and limb (b) would be no wider than limb (a). The intention behind the regulation is plainly to create an intermediate class of protected worker, who is on the one hand not an employee but on the other hand cannot in some narrower sense be regarded as carrying on a business...

17.(4) ...Thus the essence of the intended distinction must be between, on the one hand, workers whose degree of dependence is essentially the same as

that of employees and, on the other, contractors who have a sufficiently arm's-length and independent position to be treated as being able to look after themselves in the relevant respects...

18... There can be no general rule, and we should not be understood as propounding one: cases cannot be decided by applying labels. But typically labour-only subcontractors will, though nominally free to move from contractor to contractor, in practice work for long periods for a single employer as an integrated part of his workforce: their specialist skills may be limited, they may supply little or nothing by way of equipment and undertake little or no economic risk

### **Evidence of the Claimant**

- 28 The Claimant gave the following evidence relevant to the issues before the Tribunal. This is not the totality of the Claimant's evidence but a summary of those parts of the Claimant's evidence which the Tribunal considered to be illustrative of the working relationship between the Claimant and the Respondent:
- 29 In respect of her tutoring duties, the Claimant believed that she had signed a contract and that it was in the same or similar form to the tutoring contract in the bundle. She expressly accepted that when she was engaged only as a tutor, she was self-employed.
- 30 In respect of her role as Associate Director, initially it was the Claimant's evidence that she had asked for a contract and the Respondent's evidence that she had not. On being cross examined however on whether she had ever asked for her duties to be set out in terms, the Claimant said she had not and that she would not have dared to have that conversation with David and Mark. She said she believed her role would be set out in writing at some point. In the event, it was agreed that there was never any contract setting out terms which included the Associate Director duties.
- 31 The Claimant always paid her own tax and National Insurance. She rendered an invoice for her time each month. She gave evidence that she was VAT registered, although she does not appear to have ever invoiced the Respondent for VAT.
- 32 The Claimant was free to offer her services to other employers and did so. It was the Claimant's evidence that she was not only free to offer her services to other employers, but that she was positively encouraged to continue her career in screen media outside her role with the Respondent. At the time of being engaged by the Respondent, the Claimant gave evidence that she was still employed as a dialect coach on the Black Sails TV drama series (she said 2014

to 2017). She was still running her own Limited company, Centre Speech Ltd, marketing the same skills she was selling to the Respondent (dissolved March 2018) and she acknowledged that a central part of the ethos and marketing of the Respondent was that students were taught by professionals currently working in screen media. The Claimant continued to offer her services outside the Respondent's establishment throughout.

- 33 The Claimant said that she had control over the delivery of the course and the course content. No-one told her how to teach, she said. She said that she had expertise in this, and she was instructed to come in and teach it.
- 34 The Claimant agreed that she was free to substitute another person to deliver her role. The Claimant gave evidence that although she had never delegated her duties to another person, she suspected that Sam Khan "had that setup". She accepted that there may have been other tutors who similarly provided others to undertake their tutoring work on occasions. She agreed that she was never told she could not 'sub-contract' her work. She did say that anyone standing in for her would have to be approved by the Respondent in advance.
- 35 In respect of the Associate Director role in particular, the Claimant to a large extent defined her own duties. She had been recruited onto the audition panel in 2018, for a fee of £100 per day when she was required. She also gave evidence that she often opened the building in the morning and locked up at night, for which she also received a fee. If she was not available to open up or lock up, sometimes Raminta (the office administrator) would do it or sometimes the founder directors, Mark and David, would do it.
- 36 It was a feature of the Claimant's evidence in respect of her Associate Director role that she would carry out tasks without being directed to and that she did so because she believed it was necessary or helpful for her to do so. She complained of having to work late at night, because she believed she needed to respond to student messages, but she was clear that she had never been told she should do so. She said that she did not have time for breaks, but she accepted that she was never told she should work the hours she claimed to have been working. She did so because she decided that it was necessary to the role, as she had defined it. She described her work as "an open ended task" and said she was not directed what to do in specific terms.
- 37 The Claimant gave evidence that she had no set hours and indeed no target hours for the completion of her Associate Director duties. She invoiced for the agreed sum, regardless of the hours she had in fact spent on the work.
- 38 The Claimant gave evidence that she asked the Respondent to assign another of the tutors to help her with her administrative work. She accepted that she had offered to split her £1,500 per module fee with the other tutor in the event that he was assigned to assist her.



- 39 The Claimant also gave evidence that she came in to the building to familiarise herself with equipment not used in her own tutoring role, such as filming equipment, software and company procedures. She accepts that she was never asked to do this but said that she considered it necessary for the role she believed she was taking on. She said she did this “in order to better fulfil my role as director”.
- 40 The Claimant relied on a schedule, which she said showed her working hours during a period of lockdown, said to show her working for 7 days each week, up to 19 hours per day. She submitted an invoice to the Respondent for £40,000. She agreed that she was not directed to do this work or to work these hours. She also agreed that she did not seek agreement in advance from the Respondent to carry out this work.
- 41 The Claimant’s evidence was that what had started as a limited role as Associate Director had grown substantially and that she had a substantial part in the running of the school by the time she left. It has to be said that her evidence on this point was somewhat inconsistent and qualified by the fact that she accepted that she was not asked to take on the pleaded extra duties but that she took them on herself, understanding, she said, that the Respondent did not ask her to but was implicitly supportive of her expansion of her responsibilities.

#### **Evidence of Sara Emiris and Alexander Hughes**

- 42 The Tribunal heard evidence from Sara Emiris and from Alexander Hughes. Their evidence essentially consisted of retailing the understanding they had from speaking to the Claimant. Their evidence did not assist the Tribunal in determining the matters in issue at this hearing.

#### **Evidence of Mark Normandy**

- 43 Mr Normandy gave evidence that the Respondent’s approach was to offer vocational training, based on all teaching being delivered by self employed tutors who were also “current working actors, writers, directors, fight directors, voice training...” This was the Respondent’s USP, the provision of up to date training by professional with established careers in the medium in which they were acting as tutors.
- 44 Mr Normandy gave evidence that he considered that the Claimant’s description of her duties as Associate Director were grossly exaggerated and misleading.
- 45 Mr Normandy referred the Tribunal to the Claimant’s email of 17th August 2020

in respect of the extra hours she claimed to have worked on the Associate Director role during the pandemic lock-down. He pointed out that there was no suggestion that she was owed money under a contract of employment or that there had been any instruction to do specific work. She invoiced for hours worked on a remit set entirely by her. Mr Normandy was clear in his evidence (which was not controverted) that neither he, nor any other person acting for the Respondent had ever asked the Claimant to do this work or to work for these hours. He said that the Respondent was a not for profit organisation and could never have afforded to pay this kind of invoice for administrative work. He also gave evidence, again not disputed, that all the Associate Directors were paid on the basis of a per quarter sum of £1,500 and that there had never been an agreement to pay for such work on an hourly basis.

- 46 Mr Normandy took the Tribunal to an email from the Claimant dated 20th August 2020, in which she said “I am just trying to figure out how best to charge for days when the work load was lighter and less demanding. I don't want to charge the school any more than is entirely fair and necessary given the tight financial (sic) situation which I fully appreciate. Mr Normandy suggested that he did not believe that this was consistent with the Claimant's position now that she was working under a contract of employment.
- 47 Mr Normandy agreed that the Claimant had the freedom to determine the content of her course and the way in which she delivered it. He also considered that she had freedom to decide when to teach her classes but accepted that she would have had to fit in to the timetable to some extent, to avoid clashes.
- 48 Mr Normandy's evidence was to the effect that there was no mutuality of obligations, in that the Respondent was at no time obliged to provide the Claimant with work and the Claimant was at no time obliged to take the work that was offered. This did not appear to be disputed as it relates to the tutoring role at least. Mr Normandy was clear that he did not consider that the Respondent was obliged to continue giving the Assistant Director tasks to the Claimant and that she could have given up that role at any time, without needing to give notice.
- 49 Mr Normandy agreed with the Claimant's evidence that she was free to substitute others to deliver her tutoring duties. He indicated that Mary Roscoe and Sam Khan had in fact provided substitute tutors in the past and that Sam Khan continued to do so on a regular basis.
- 50 Mr Normandy gave evidence that the Claimant was also not obliged to personally perform her duties as Associate Director. He gave the example of opening and closing the school, a role the Claimant had given evidence was part of her duties. Mr Normandy gave evidence, which was not disputed, that the Claimant would often arrange directly with Raminta that she, Raminta would open the school instead, to give the Claimant the opportunity to use off-peak

train tickets from Brighton.

- 51 Mr Normandy gave evidence that the Claimant's role as Associate Director was expressly agreed to be self employed and that she invoiced for her fee at £1,500 per quarter. He gave evidence that the other Associate Director, David Shine, did likewise.
- 52 It was Mr Normandy's evidence for the Respondent that the Associate Director role involved limited responsibilities, of an administrative nature, which she was largely free to carry out when and where and in what manner she chose. He said that he considered these duties to amount to 3 to 4 extra hours per week.
- 53 Mr Normandy's evidence was to the effect that he and his co-founder David Craik, considered that the Respondent was a customer of the self-employed tutors, who were all providing services in the course of their own business, as they did for other customers.
- 54 Mr Normandy gave evidence to the effect that the Claimant's role as Associate Director was subordinate to her principal role as a tutor and that her duties were limited and administrative in nature.

## **FINDINGS**

### **Disputes of fact**

- 55 The major factual difference between the parties was the extent to which the Claimant's responsibilities under the Associate Director mantle had expanded over time, with the Claimant asserting that her role had become significantly more substantial over time, to encompass a major part of the running of the school and the Respondent denying that and asserting that the role of Associate Director was and remained limited and largely administrative, amounting to 3 to 4 hours per week, to be completed as she saw fit.
- 56 The Tribunal preferred the evidence of the Respondent on this point. The Claimant's case, as it developed in evidence, was in essence that she had taken on herself more and more duties, largely in relation to student support, but also in course development. She agreed that she had never been asked to take on these tasks but was of the view that they were essential and she had to do them because no-one else was. An example of this was her decision to set up a WhatsApp group with the students and to respond to student enquiries at night and on weekends. This was never part of her role as far as the Respondent was concerned but it was something the Claimant believed to be necessary.

- 57 The Tribunal came to the conclusion that the Claimant was trying to develop her role as Associate Director into much more than it was ever intended to be and that there was a substantial mismatch between what she believed she ought to be doing and what the Respondent required her to do and was paying her to do. She herself said that she never had a discussion with the Respondent about the additional work she took on until after she had done it and sought payment for it, by tendering an invoice for circa £40,000.
- 58 The Tribunal therefore finds that the Claimant's additional duties under the umbrella of Associate Director were, as the Respondent avers, limited, administrative in nature and able to be completed in a short time in a manner and largely at a place that the Claimant saw fit.

### Employee status

- 59 It was the Claimant's own position until the second day of the hearing that she was self-employed in the tutor role and that she remained so until she was appointed to the Associate Director position in July 2018. Her grounds of claim put the point of her transition to employment status at October 2019.
- 60 During the course of submissions made on her behalf, it was suggested that she had not intended to make that concession, as she did not understand the implications.
- 61 The Claimant had complete control over how she delivered her tutoring services, controlling course content and delivery without significant interference from the Respondent. She agreed herself that she was independent in this regard. No-one told her how to teach.
- 62 The Claimant was free to offer her services to other parties and indeed her evidence was that she did so and that the Respondent positively encouraged her to do so. For that purpose, she maintained a limited company and published her services on various web sites. On her own evidence, she was providing her services as a dialect coach on the TV series Black Sails from 2014 to 2017, a period which coincided with her provision of services to the Respondent.
- 63 The Claimant accepted that she had a right of substitution, albeit a conditional one, and that she was aware of at least one other tutor exercising that right (Sam Khan). The (unchallenged) evidence of Mr Normandy that two tutors were exercising that right and that Sam Khan sent in his own "trusted fight assistants". The right to substitute was however constrained, to the extent that the Claimant could only provide a substitute tutor with the prior approval of the Respondent, who wished to be satisfied as to the "qualifications, experience and capability" of the proposed substitute.

- 64 The Claimant invoiced for her services at an agreed fee at an agreed frequency. She paid her own tax and National Insurance. She was VAT registered. She traded outside the relationship with the Respondent through her own Limited Company.
- 65 When the Claimant took on the additional role of Associate Director, she herself gave evidence that originally, the duties were ad hoc and that she was paid a sum to compensate her for the extra duties, but she was not told what to do or how to do her job.
- 66 The Claimant was free to substitute others to carry out some of her duties. It was not disputed that she would as Raminta to open up and lock up for her on occasions, without needing to ask the Respondent or to seek permission.
- 67 The Claimant's own evidence was that she asked to Respondent to assign another tutor to assist her and take over parts of her role that she was finding it difficult to manage. She offered to share her quarterly fee with him, so that she was essentially proposing to delegate that work to the other tutor, with him delivering the service for which she was being paid.
- 68 It was abundantly clear from the claimant's evidence that she did far more than she was ever asked to do and that she did so in a genuine belief that the extra work was necessary to the continued success of the school. She accepted however that the hours she invoiced for in August 2020 were never approved in advance and that insofar as she was working long hours and 7 day weeks, she was doing so entirely on her own initiative.
- 69 The Tribunal finds that the above factors inevitably lead to the conclusion that Claimant was not an employee of the Respondent at any point.

### **Worker status**

#### **Obligation to provide services personally**

- 70 As already noted above, the Claimant accepts that she had a right of substitution in respect of her tuition work, albeit she never exercised that right. She does not suggest that it was in any way a sham and she accepts that two of the other tutors did in fact substitute others to deliver their tuition. She also accepted that she herself substituted Raminta to provide part of the services that she was contracted to provide in her Associate Director role.
- 71 Insofar as this was a conditional, rather than unfettered, right of substitution, the only fetter was the requirement of the Respondent that they should be satisfied that the proposed substitute tutor was suitably qualified and experienced to

deliver the course. The fact that this was a real right of substitution is illustrated by the right actually being exercised by two of the other tutors, apparently on a regular basis.

- 72 The Tribunal considers, having regard to the fourth example in paragraph 84 of the Pimlico Plumbers case, that the Claimant was not obliged to provide her services personally, in the sense contained in s230(3)(b) ERA 1996 and that she was therefore not a worker.

Customer exception

- 73 In the event that the Tribunal is wrong about the necessity for personal service, and the fetter on that right makes the contracted performance compatible with worker status, in any event, the Tribunal was of the clear view that the Claimant was supplying her services to the Respondent in the course of her business undertaking, such that the Respondent was a customer of that business.
- 74 The Tribunal reaches that conclusion on the basis of the undisputed evidence that the Claimant continued to offer the same services to other customers, including providing services on the Black Sails TV series, advertising her services on professional websites and running a Limited Company, through which she provided her services to other, unrelated parties. She was also, on her own evidence, delivering her own teaching materials, in her own way, relying on her own expertise.
- 75 It was the Claimant's own evidence that she was not only permitted to offer services elsewhere, including to direct competitors, but that she was positively encouraged to have a career outside the Respondent organisation, and that all of the tutors were encouraged to do the same.
- 76 The Tribunal finds that the Claimant was, as she herself initially agreed, self employed in her position as a tutor and that the essence of the relationship in this regard remained the same throughout the period that she provided services to the Respondent as a tutor and as Associate Director.

**Employment Judge Wilkinson**

**Dated: 18<sup>th</sup> March 2022**