

Briefing Note



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Tripartite Agreements

Contract for services or of service?

Historically the question of whether an individual is working under a contract of service or is working on a self employed basis i.e. under a contract for services has proved difficult. The distinction is often subtle and all of the circumstances of the relationship have to be considered. Most of those involved in the employment industry will however be well aware of the concepts of the mutuality of obligation and control, the corner stones of any contract of service (i.e. a contract of employment).

The position is further complicated where an employment agency is involved and there is a tripartite agreement involving the agency, the worker and the end user client. It is rare that there will be a contract of employment expressly spelt out in the relationship between the worker and the agency. An agency is very unlikely to exercise sufficient control over the worker to establish a contract of service. The key issue in most cases is therefore whether or not a contract exists between the worker and the end user. If not, the worker will find themselves without statutory employment protection.

The case of *M James v. Greenwich London Borough Council* will have set the minds of end user clients at rest. Contrary to the views expressed by Sedley LJ in *Dacas v. Brook Street Bureau UK Ltd* case the mere passage of time is not sufficient to justify the

existence of a contract of employment between an end user client and a worker, even where that relationship has been effective for a number of years.

Following the *M James* case the issue for the Tribunal is whether the way that the contract is performed is consistent with the agency arrangements or whether it is only consistent with an implied contract between the worker and the end user client and would be inconsistent with there being no such contract. Workers will therefore find it increasingly difficult to bring claims against the end user clients.

Should you wish for more detail on the above topic either contact Nick Ranson on +44 207 404 2121 or contact us via info@key2law.co.uk

Note: this update is intended only as a general statement of the law and no action should be taken in reliance upon its contents.

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