EMPLOYMENT TRIBUNALS

Claimant: Ms A White and others

Respondents: (1) UAL Short Courses Limited
(2) University of the Arts London

Heard at: London Central (by CVP) **On:** 13,14,15,16,17 November, 18, 19 & 20 December 2023

Before: Employment Judge Professor A C Neal

Appearances

Claimants: Ms E Whitehead (Solicitor)

First and Second Respondents: Ms I Omambala KC (Counsel)

JUDGMENT

(1) In relation to their short course non-award-bearing teaching contracts all of the Lead Claimants were employed by the First Respondent (UAL Short Courses Limited) on limited-term contracts falling within Section 235(2A) and (2B)(a) of the Employment Rights Act 1996.

(2) For the duration of each of those contracts the Lead Claimants were "employees" within the meaning of Section 230(1) of the Employment Rights Act 1996.

(3) In the case of four of the Lead Claimants (Mr Romano, Ms Montero-Sabin, Ms Best and Ms Pulit) upon completion of each of those limited-term contracts there was a "dismissal" within the meaning of Section 95(1)(b) of the Employment Rights Act 1996.

(4) In the case of the other two Lead Claimants (Ms Vehbi and Mr Von Nordheim) their contracts were brought to an end by discharge on the part of the First Respondent and there was a "dismissal" within the meaning of Section 95(1)(a) of the Employment Rights Act 1996.

(5) None of the Lead Claimants has sufficient continuous service to enable them to bring claims of unfair dismissal by reason of their employment on limited-term short course non-award-bearing teaching contracts.

(6) The claims of the Lead Claimants alleging unfair dismissal by reference to Section 94 of the Employment Rights Act 1996 are dismissed.

(7) Lead Claimant Mr Thomas Von Nordheim does not have sufficient continuous service to enable him to bring a claim for entitlement to a redundancy payment by reference to Section 135 of the Employment Rights Act 1996.

(8) The claim of Mr Thomas Von Nordheim for entitlement to a redundancy payment is dismissed. For the avoidance of doubt this covers both the Claimant's claim by reference to Section 135(1)(a) and/or any alternative claim by reference to Section 135(1)(b) of the Employment Rights Act 1996.

(9) To the extent that any of the other Lead Claimants seeks to maintain a claim alleging entitlement to a redundancy payment by reason of lay-off or short time working within the meaning of Section 135(1)(a) or (b) of the Employment Rights Act 1996 none of them has sufficient continuous service to enable them to bring that claim. Any such claim is dismissed.

REASONS

Background

1. This preliminary hearing held in public is concerned with the determination of a number of issues prior to a full merits hearing. At a preliminary hearing before Employment Judge Khan on 9 November 2022 the case was listed to be heard over three weeks from 13 November 2023 (subject to review in the light of any preliminary issue determinations). That listing has now been converted to an 8-day preliminary hearing in public to determine the preliminary issues set out below. A revised listing window has already been set for a full merits hearing (subject to review in the light of the findings at this preliminary hearing) between 12 February and 1 March 2024 inclusive.

2. By a Claim form ET1 received by the London Central Office of the Employment Tribunals on 28 September 2020 proceedings were initiated on behalf of 40 Claimants. The claims made on behalf of each of those Claimants alleged (1) Unfair Dismissal; (2) Entitlement to a Redundancy Payment; (3) Breach of Contract (Notice money); (4) Unlawful Deductions from Wages; and (5) Unpaid Holiday Pay. The Respondent to that claim was stated to be "UAL Short Courses Limited". ACAS early conciliation certification was obtained in relation to the multiple claim [Trial Bundle 3046-8].

3. At around the same time one of the Claimants listed in the Claim Form presented to the London Central Tribunal (Mr Antonello Romano) presented a separate Claim Form ET1 to the London South Office of the Employment Tribunals. That claim alleged (1) Entitlement to a Redundancy Payment; (2) Breach of Contract (Notice money); and (3) Less Favourable Treatment by reference to the **Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000**.

4. At a case management hearing before Employment Judge Stout on 18 March 2021 it was agreed that the case should proceed to a preliminary hearing on the basis of selecting a group of "Lead Claimants" (pursuant to **Rule 36 of the Employment Tribunals Rules of Procedures 2013**) in relation to whom a number of preliminary issues could be determined.

5. It was also agreed that steps should be taken to consolidate the claim presented by Mr Romero to the London South Employment Tribunal with the 40 claims which had been presented to the London Central Employment Tribunal. Following administrative agreement between the respective regions Mr Romero's claim presented to the London South Tribunal was dismissed upon withdrawal, and he remained part of the multiple claim being managed in the London Central Tribunal.

6. A wide range of issues was compiled in the light of discussion before Employment Judge Stout and orders were made for those to be determined at a preliminary hearing in public by an Employment Judge sitting alone.

7. In the course of further case management preliminary hearings the list of issues was further refined and the identities of the "Lead Claimants" and the "non-Lead Claimants" was settled. In addition, at a preliminary hearing on 9 July 2021 before Employment Judge Stout, the claims presented by Mr Romano to the London South Tribunal were consolidated with the London Central multiple case and his claim by reference to the **Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000** was dismissed upon withdrawal. A decision was also made to join University of the Arts London as a Second Respondent.

8. The list of "Lead Claimants" agreed by Employment Judge Stout comprised: (i) Antonello Romano; (ii) Rowena Luke-King; (iii) Irene Montero-Sabin; (iv) Suky Best; (v) Belgin Vehbi; (vi) Alice White; (vii) Charmian Griffin; and (viii) Kalina Pulit. However, subsequent to that identification of the group of "Lead Claimants", the claims brought by Rowena Luke-King, Alice White and Charmian Griffin have been disposed of. Meanwhile, a further claim presented by Thomas Von Nordheim to the London East Office of the Employment Tribunals and received on 18 January 2022 was identified as arising out of similar circumstances and giving rise to similar issues as those involved in the current London Central multiple. ACAS early conciliation certification had also been obtained in relation to Mr Von Nordheim's claim [Trial Bundle page 3049]. That claim consisted of the same five allegations as the Claimants in the multiple, and the case was therefore transferred to London Central with Mr Von Nordheim being added to the list of "Lead Claimants".

9. For the purposes of this preliminary hearing therefore the list of "Lead Claimants" is: (1) Mr Antonello Romano; (2) Ms Irene Montero-Sabin; (3) Ms Suky Best; (4) Ms Belgin Vehbi; (5) Ms Kalina Pulit; and (6) Mr Thomas Von Nordheim.

10. The issues identified by Employment Judge Stout have subsequently been refined and reduced – in particular following a preliminary hearing before Employment Judge Burns which took place on 22 September 2022 with a view to case managing the proceedings to trial. They were further refined following a disposal of the claims alleging entitlement to a redundancy payment (with the exception of Mr Von Nordheim). That disposal of the redundancy claims followed from a preliminary hearing before Employment Judge Khan on 9 November 2022. However, some confusion remained in the wake of the orders and judgment made during that hearing, so that a further preliminary hearing was held before Employment Judge Khan on 6 January 2023.

11. In the light of those preliminary hearings and their outcomes there was discussion between the respective representatives and the Employment Judge on the first day of this hearing to ascertain precisely what issues were considered still to be "live" for this preliminary hearing. That discussion was returned to at the end of Day 5 of this hearing, and again on the morning of Day 7 during the course of submissions.

THE ISSUES

12. It is agreed that the issues for this hearing are as follows (the notation reflecting the original orders of Employment Judge Stout):

Employment status

(a) Were the Claimants employees or workers or self-employed individuals in respect of work done by them as tutors on courses run by UAL SC Limited within the meaning of s 230 of the ERA 1996?

(b) If they were, who was their employer, UAL or UAL SC Limited or both?

(c) If they were employees, do they have sufficient continuous service to enable them to bring claims of unfair dismissal having regard to ss 108, 210-214 of the ERA 1996?

Time limits / jurisdiction issues

(f) Have the Claimants been dismissed within the meaning of s 95 of the ERA 1996?

(g) If so, what was (were) the Claimants' effective date(s) of termination?

(h) Were the Claimants' claims presented within the time limit in s 111(2)(a) of the Employment Rights Act 1996 ("ERA 1996")?

(i) If not, was it not reasonably practicable for the complaints to be presented within that time limit?

(j) If so, were the complaints presented within a reasonable further period within s 111(2)(b) ERA 1996?

Lay-off

(k) Were the Claimants laid off within the meaning of ERA 1996, s 147 employed under a contract on terms and conditions such that their remuneration under the contract depends on their being provided by the employer with work of the kind which they are employed to do, but were not entitled to any remuneration under that contract in respect of any week(s because the employer did not provide work for them (ERA 1996, s 147(1))?

(l) Were the Claimants (or any of them) kept on short-time within the meaning of ERA 1996, s 147(2) in that they were by reason of a diminution in the work provided for them by the employer (being work of a kind which under their contract the Claimants were employed to do) paid less than half of their usual week's pay (as defined)?

13. On 15 April 2021 an application was made in writing to join a trade union – the University and College Union (UCU) at the University of the Arts London – for the purposes of pursuing a claim arising under **s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992** (alleged failure to engage in redundancy consultation). At the same time an application was made to join the University of the Arts London (UAL) as a Second Respondent to the proceedings. Employment Judge Stout ordered at the preliminary hearing before her on 9 July 2021 that those applications should be determined at this public preliminary hearing. The University of the Arts London (UAL) has subsequently been joined as a Second Respondent. The application to join the University and College Union (UC) was withdrawn.

THE HEARING

14. This preliminary hearing has been heard over eight days. Days 1 – 5 were taken up with live witness evidence. Day 6 and the morning of Day 7 involved submissions by the respective representatives. The Employment Judge retired to consider his decision late on the morning of Day 7 and an outline of the provisional disposal in the decision was presented to the parties on the afternoon of Day 8. The Employment Judge then reserved the matter in order to make it possible to deliver full reasons together with the judgment.

15. Oral evidence has been received from each of the six "Lead Claimants", together with Ms Mairead Kelly and Ms Danielle Salvadori on behalf of the Respondents. All of the witnesses gave their evidence under oath on the basis of prepared witness statements. In addition, an unsworn witness statement was received on behalf of Ms Laura Friedner.

16. Each of the witnesses was subjected to cross-examination, as well as, on occasion, to questioning from the Employment Judge.

17. A Trial Bundle of documents was prepared for use at the hearing, running to 3,398 pages. This was supplemented by a number of Excel sheets prepared to assist the Tribunal in identifying the employment patterns of the Lead Claimants. A number of miscellaneous documents were also appended to the witness statement of Ms Belgin Vehbi – some of which reflected items already in the Trial Bundle.

18. The closing submissions by the representatives were accompanied by a skeleton argument prepared on behalf of the Respondents and a more detailed written outline prepared on behalf of the Lead Claimants.

19. The Employment Judge places on record his appreciation of the courtesy and patience displayed by the representatives during the course of these quite lengthy proceedings – including a very late session on the afternoon of Day 6.

FINDINGS OF FACT OF GENERAL APPLICATION

20. Having regard to the evidence given by the Lead Claimants (including responses given during the course of cross-examination and to questions put by the Employment Judge), documents included in the Trial Bundle prepared for this hearing, and additional documents produced during the course of the hearing, the Tribunal makes the following general findings of fact:

The Respondents

21. The First Respondent (University of the Arts London Short Courses – UALSC) is a provider of education and training programmes across a wide spectrum of specialist areas. UALSC is a wholly owned subsidiary of the Second Respondent (University of the Arts London – UAL – "the University") and is a limited company.

22. UALSC is responsible for the delivery of all short courses (with a few exceptions) within the framework of activities of the Second Respondent. In September 2018, some courses in the Language Centre and Study Abroad transferred from UALSC to the University and courses in these areas have been managed by the University from that date onwards.

23. It was pointed out that UALSC has a commercial purpose and is not a charity. The activities of UALSC are different from the work undertaken by the University. UALSC delivers short courses that are not subject to external validation or moderation. Furthermore, UALSC does not offer any qualifications to its students, nor is there any formal academic assessment of the work they do while on UALSC's courses.

24. As a result, UALSC activities attract VAT as they are deemed to be “training” for VAT purposes. By contrast, UAL delivers degree courses and other qualifications that are subject to external or internal validation under its degree awarding powers. UAL offers no courses which attract VAT, as all UAL courses are deemed “education” for the purposes of VAT.

25. The origins of the First Respondent date back to various departments within The London Institute – including the DALI department and the London College of Fashion. Initially, this manifested itself as “Developments at London Institute Ltd”, which was changed to “London Artscom Ltd” in July 2004 This then developed into “London Artscom”. In March 2016, the name of the First Respondent (described by witnesses for the Respondents as “the business”) was changed from “Artscom Ltd” to “UAL Short Courses Ltd” (UALSC).

26. UALSC has its own branding which incorporates a reference to the University. The University generally uses "ual:" as a logo. UALSC branding generally includes "ual: short courses". Other trading subsidiaries of the University (which include UAL Arts Temps, formed in April 2021, and UAL Ventures Ltd) follow a similar approach.

27. UALSC receives a number of services from the University, including studio and office space, HR and finance support, and IT and digital services. UALSC has webpages hosted on UAL’s website, which is where students can see and book short courses. UALSC pays a management fee to the University for all of these services.

28. The University administers the payroll for UALSC and UALSC transfers funds to UAL for payment of payroll. This has been managed through UALSC transferring funds to the University, which is then spent against, and additional funds added as required. While there has been a separate payroll for UALSC since 2019, the management of payroll continues to be part of the service provided by UAL to UALSC.

29. UALSC gives students certificates on completion of their courses, and the University allows UALSC use of their logos for these. Those certificates, which were previously on paper, are now issued electronically.

30. UALSC is an employer member of the Local Government Pension Scheme (LGPS) and an admitted body, with an admission agreement between UALSC and LGPS. The UALSC’s membership of the LGPS is separate from the University’s membership of the LGPS scheme. The University offers academic staff, including

hourly paid lecturers, entry into the Teachers Pension Scheme (TPS). UALSC is not an employer member of TPS.

31. UALSC has never formally recognised any trade union, though it has allowed individual tutors or staff to be accompanied to meetings by a Trade Union representative should they request this. No Trade Union has ever made a formal request to be recognised by UALSC, and has never requested a meeting with a Managing Director.

Organisation of Short Courses and Method of Engagement

32. Ms Kelly and Ms Salvadori described to the Tribunal how the UALSC programme of short courses is developed, how tutors are recruited and engaged, and the procedures which lead to eventual delivery of those courses. The Tribunal also heard evidence from the Lead Claimants as to their own experiences in this regard. By and large, there was a substantial measure of agreement as between the various accounts.

33. UALSC has a team of approximately 40 permanent staff who deal with the administration and organisation of courses throughout the year. This team works for UALSC on an ongoing basis supporting different courses. UALSC also has approximately 800 hourly paid tutors who deliver the programme of short courses.

34. Ms Salvadori described the process in terms that:

> Each time a UALSC tutor agrees to teach on a course they are issued a new contract through the UAL HPS system which they need to accept, reject or question. Before the first contract can be issued a tutor's details such as name, address, bank details and National Insurance number are collected using the HPAS2 form. Once this information has been inputted into the HPS system the forms are destroyed under UALSC's data retention policy.

35. Ms Salvadori told the Tribunal how what had previously been employment practices “largely managed through custom and practice” were formalised between 2018-2020, following consultation with the permanent staff of UALSC. This resulted in the creation of newly written policies, which were formally introduced for permanent staff on 1 January 2020 and for hourly paid staff in May 2020. In particular, those policies included a “Method of Engagement Policy” (pages 169-170) for hourly paid staff.

36. Prior to this, the various separate business units would form a view about their offerings to be advertised for the forthcoming period. This would include decisions about the physical or on-line location offered. According to Ms Salvadori, as part of the process of ascertaining tutor availability for delivery of those offerings:

> Each unit would get in touch with its tutors individually to negotiate with them what their availability was for the courses planned. This enabled the tutors to state their preferences which the UALSC business units tried to facilitate. The timeline for this varied by business unit and could be up to one year in advance. This process resulted in up to 50% of courses having insufficient student bookings to go ahead. Because of this, no new contract for teaching was offered until it was clear that the course concerned had sufficient students booked to go ahead. Each course was treated separately from others, including having a separate budget code and budget line, which meant that from time to time an iteration of a course might run in one year, month or term but not in the next.

37. While the "formalisation" process for policies, together with a restructuring of the business, led to the separate business units being merged into one, Ms Salvadori summarised the effect as being that:

> …the process for course planning became more consistent although largely unchanged.

38. A computerised system (HPS) has been in use for managing this process. The Tribunal had an explanation of that system, including being taken through the various stages by reference to documents generated by HPS and included in the Trial Bundle. Thus, as described by Ms Salvadori:

> Once it is clear that a course has attracted sufficient students to be able to be confirmed the UALSC tutor who is available to teach must log on to the HPS system and accept the contract on the system if they wish to accept the contract [B/634]. … If a contract is not accepted on the system, … a tutor has not accepted the contract offered, cannot be paid and UALSC must make alternative arrangements or cancel the course.

The contract offered for new fixed term contracts was exhibited for the Tribunal [pages 172-174].

39. The Lead Claimants all described in their witness statements what had happened on various occasions when they had entered into agreements to deliver short courses.

40. Mr Antonello Romano gave evidence that:

> In April 2014, I signed my contract (HPAS2 form) and I was given a copy of the Terms & Conditions of employment which clearly refer to the HPAS2 form as my contract. However, I was never given a copy of the HPAS2 form.

He explained that:

> Every year my former line manager, Ms Alison Green, Business Manager, UAL Short Courses Ltd at London College of Communications, used to send me a schedule of courses which I agreed to teach. We often met in person to make changes to my timetable in order to meet my own availability as well as room availability, until the timetable was finalised. Former Short Courses Coordinator, Terence Teevan, then published all courses on the University's website and I made myself available for all those dates without committing to any other work.

Furthermore:

> If a course had a minimum of 4 students enrolled two weeks before the course started, the course was confirmed. Otherwise, the course was cancelled without payment. This is the only reason a course could be cancelled without payment according to the Terms & Conditions of employment. To avoid cancelling a course, oftentimes, my former line manager, Alison Green, and I would agree to postpone the course of a few weeks to allow for more students to enrol, provided that the students already enrolled agreed to the date change.

Then:

> Once a course is confirmed, a payroll administrator sends me a link to an individual course schedule ("contract") in the University's Hourly Paid System (HPS), which allows for the teaching hours to be added to my payslip for payment. … this is often sent by the payroll administrator during or after the course has ended, causing that teaching hours are not paid within the months when the teaching is carried out, but one or two months later and in bulk.

41. Documents in relation to Mr Romano's delivery of his "Digital Marketing Strategy" contract are included in the Trial Bundle at pages 444-5, 454-5, 456-7, 466-7, 468-9, 474-5, 484-5, 486-7, 494-5, 502-3 and 504-5 (intensive online), together with documents related to his contracts for ""Web Design HTML and CSS", "Adobe in Design: Fundamentals of Layout Design", "User Experience (UX) Design Lean Methodology", "UX Design", "User Interface (UI) & Visual Design" [between pages 444-511].

42. In addition, what were described as screenshots of the HPS account relating to Mr Romano are included in the Trial Bundle at pages 512-537 – including all of the courses recorded as UALSC [pages 512-515], The "Contract Overview" tabs [pages 516-534], offer an example specific to Mr Romano of how the "Contract Overview" and the "Contract" generated by the HPS system would look [page 535]; and the "My Payments" information [pages 536-7].

43. Mr Thomas Von Nordheim gave evidence that he started working for the UAL on 20 June 2004. At paragraph 3 of his witness statement he stated that:

> I had no choice over when or where I worked and I had to provide personal service. I was paid an hourly rate fixed by the UAL, and I did not submit invoices for my salary. I was offered courses at the beginning of the year and if I was unavailable for any reason, which only happened once in November 2019, (see paragraph 11 below) then I lost the opportunity to teach the Autumn haute couture course in future (as the Autumn dates for the course I had established and taught exclusively since 2004 was given to another tutor). I asked for the Autumn course to start one week earlier, but I was not given any alternative dates. The significance of this is that there were penalties for taking time off. It would have been impossible to take annual leave if that resulted in your being unable to teach a course.

44. Documents in relation to Mr Von Nordheim's contracts of engagement, the delivery of his "Couture Tailoring" course, and payments processed in relation to that teaching were included in the Trial Bundle, along with a selection of email correspondence covering his early employment and from around the time of Covid lockdown in March 2020 and subsequently [pages 611-4, 648-663, 666-9, 673, 689-694, 703-5 and 716-729].

45. In addition, Mr Von Nordheim described how:

> Very occasionally I was asked to deliver some teaching on the UAL BA (Hons) Course – but that was not regular work that continued from 2004.

In his view:

> The UAL has tried to confuse my claim for continuity of employment as a short course tutor for the UAL (and UAL recognition of such in 2019 when they compensated me for loss of hours based on length of service (paragraph 20 below) with an offer of work on its BA Hons course. My employment as an HPL started with the UAL on 20 June 2004 and continued up until 16 November 2022.

46. Ms. Irene Montero Sabin, who was also a doctoral student and who had contracts both with UALSC and UAL, described in her witness statement how she was first engaged in 2016 (under the system in operation before the on-line portal version of the HPS system) and subsequently:

> All the short courses are advertised on UAL's website…"; "I received the Terms and conditions of employment on the 20th October 2016 (EXHIBIT D). I signed the AT2 form on the 4th October 2016.

She then described how:

> The first teaching agreement was sent to me as well on 20th October 2016, after I had started delivering the course. (EXHIBIT E) The 7th October 2016 was my first class of the Modern Art History short course, which came to an end on 9th December 2016. All of my courses were 10 weeks long. On the 20th October I received an email containing what short courses called my 'Engagement Schedule'. On the document itself, is called an HPAS2 form. I taught 3 courses that academic year 2016-17 (October-December, January-March and April-June.)

Subsequently:

> The following Spring when I received the scheduling agreement for the 2017-18 academic year, I was booked to teach the same courses (EXHIBIT F). Then in September 2017, 4-5 weeks before my courses were due to run, I was told that there weren't enough bookings and they were not going to run during the autumn term. (EXHIBIT G) That was the first time I realised that the courses did not always run. In the Summer I created Contemporary Art History short course, which was added to the short courses' offering, because my students had demanded it. Later, on 3 May 2018, I received the scheduling dates for the 2018-19 academic year by email. (EXHIBIT H)

47. Documents in relation to Ms Montero Sabin's delivery of her "Contemporary Art History" contract were included in the Bundle at pages 231-2, 233-4, 235-6, 237-8, 239-240 and 241-2.

48. In addition, what were described as screenshots of the HPS account relating to Ms Montero Sabin were included at pages 243-251, showing not only her courses for UALSC but also her engagements for Study Abroad (which were presented as being undertaken for "Strategic Development" rather than for "UAL Short Courses").

49. Ms Suky Best, in her witness statement dated 14 September 2021, stated that:

> We do not receive any emailed contracts. We used to receive an email confirmation that the course was running and then subsequently receive a paper contract by post which had to be signed and returned. This stopped about 5 years ago. Now we just click on a link on the UAL portal to accept a course.

50. Documents in relation to Ms Best's delivery of nine assorted course contracts were included in the Bundle at pages 175-192. These included her "Graphic Design and Computers" contract, together with "Advanced Retouching with Photoshop", "Applied Surface Design using Illustrator and Photoshop", "Graphic Design Portfolio" and "Maximum Photoshop".

51. Screenshots of the HPS account relating to Ms Best are also included at pages 193-206 of the Trial Bundle – including, in addition to the UALSC courses, engagements for Central Saint Martins in the role of "Associate Lecturer".

52. Ms Kalina Pulit, who had already previously worked for UAL Outreach, started working for UALSC in 2017 and told the Tribunal in paragraph 7 of her witness statement how:

I never received an employment contract

I am just shocked that there was never any employment contract. I was never issued with terms and conditions. I have never been on a full-time contract because I was employed by UAL straight out of university. I did not even think of asking for a copy of my terms and conditions of employment. The system of being paid on an hourly paid basis has worked very badly for me, as it has left me in a very difficult position since March 2019. I have not spoken with anyone at HR until 2020. (EXHIBIT D) – contract example.

However, further on in her witness statement Ms Pulit stated that:

I was not aware of any terms and conditions of employment. I was never sent any terms and conditions. When I log into the online system to accept the hours contracted per course, terms & conditions are not visible. Only recently I have noticed where they are within the system.

53. Documents in relation to Ms Pulit's delivery of her "Digital Marketing Strategy" contracts were included in the Bundle, along with those for delivery of her courses on "Social Media Marketing", "Selling Online", "Social Media", "Social Media Strategy for Fashion", "Transmedia Storytelling", "Producing Online Video Content", "Creative Direction for Digital Media", "Practical PR Campaign Planning", "Digital Marketing", "PR and Marketing (16-18 Year Olds)", "Master Fashion Social Media", "Future Trend Forecasting for Brands and Organisations", "Creative Industries", "Multimedia Storytelling" and "Social Media Marketing" [pages 252-389].

54. In addition, what were described as screenshots of the HPS account relating to Ms Pulit were included at pages 390-397 – showing the UAL Short Course courses together with work done for "Strategic Development" (Study Abroad Tutor) and "Operations & External Affairs" (English Plus), as well as work on BA courses (London College of Fashion and London College of Communication). These were accompanied by the "Contract Overview tab" for each of the UALSC contracts (pages 398-437), an example of how the "Contract Overview download" for a UALSC contract would look (page 438), an example of the "Terms and Conditions download" for each UALSC contract (page 439), and an overview of the "My Payments" information (pages 440-443).

55. Ms Belgin Vehbi stated that when she commenced working in 2007:

… I went to the short course office at UAL LCF, John Princes Street campus, and I signed the HPAS2 form containing my bank details, address contact details, and NI number. I believe they also required the details of my next of kin, but I cannot remember if they also asked for a copy of my passport or proof that I could work in the UK. UAL SC gave me a copy of my HPAS2 when I started.

She also said that:

I do not recall receiving any terms and conditions of employment, which may have been attached to the HPS2 form when I started employment with UAL Artscom in 2007. There are terms and conditions attached to subsequent schedules of work, which the UAL call a contract.

In relation to engagements thereafter, she told the Tribunal that:

Every time I was offered a course, I would receive a similar letter from UAL. Although there is always a possibility of a course being cancelled, if there are not enough students, 9.5 out of 10 times all my courses ran. The letter says that a minimum of 8 students are required to run the course, I have taught it on many occasions with only 3 or 4 students because it is still commercially viable to do so. Sometimes a student would just stroll in on the first day of the pay using their credit card and would be enrolled on the course.

56. Documents in relation to Ms Vehbi's delivery of her contracts for "Draping on the Stand" are to be found at pages 207-8 and 219-220 of the Trial Bundle. Those relating to her delivery of "Introduction to Draping on the Stand" are at pages 209-210, 211-212 and 217-8, while those for "Draping on the Stand 2" are at pages 213-4.

57. In addition, what were described as screenshots of the HPS account relating to Ms Vehbi are at pages 221-230, including the "Contract Overview tab" for the UALSC contracts [pages 223-228], a personalised "Contract Overview" [page 228], the "Terms and Conditions download" [page 229] and the related "My Payments tab" [page 230].

58. Various supplementary documents were also produced by some of the Lead Claimants, relating to transactions and correspondence between themselves and UALSC or UAL during the period prior to the introduction of the computerised portal HPS system.

59. In particular, Ms Vehbi produced a substantial set of documentation, including correspondence dating back to November 2007 (relating to an engagement for teaching at the London College of Fashion during Spring 2008). Similarly, Mr Von Nordheim gave an account of his experiences while entering into engagement s with the London College of Fashion, Artscom and, latterly, UAL Short Courses. Ms Best also made reference during the course of her evidence and cross-examination to arrangements for engagement during her career extending back to 1995, with DALI, Artscom and, finally UAL Short Courses.

<u>Documentation relating to Engagement and Terms & Conditions</u>

60. The Tribunal heard that, in 2013, UALSC adopted an hourly paid system electronic database for the issuing and storage of fixed term contracts for UALSC tutors. The original system had been an off-line database which was replaced by a new version of the "HPS" system in Autumn 2018. The Tribunal was told that data contained in that off-line database is no longer accessible, and that this has meant that the First Respondent no longer has copies of old contracts from 2013 to Autumn 2018 inclusive. While that non-availability of historic documentation is regrettable, the Tribunal accepts the explanation given by the Respondents, which was not challenged.

61. A formal document entitled "ual: short courses – Tutors and Teachers – Method of engagement" was included in the Trial Bundle at pages 169-170. As described by Ms Salvadori (and Ms Kelly, in relation particularly to the circumstances of Mr Von Nordheim), there was communication by various means (most commonly email) between the short course organisational team and individual tutors about the future programme of offerings by UAL Short Courses and possible component elements which could be advertised for future provision. This would include consideration of putative dates and availability, together with other matters arising in respect of the delivery of any such course. Examples of these exchanges of correspondence demonstrate that individual tutors would commonly commit to running a particular short course, identifying potential dates and times.

62. Once a particular course is confirmed, an offer is made, and the tutor concerned is then directed to the HPS Portal. Upon accepting the offer, the HPS system generates documentation concerning terms and conditions and payment details.

63. Within that framework, Ms Kelly gave evidence that:

> While UALSC does try to offer hours to tutors who have a track record of delivering a particular course, we are not required to do so and we cannot compel tutors to work on particular dates or hours unless they accept a particular offer.

64. The key document created in relation to any of the engagements entered into by the Lead Claimants under the HPS system as it has operated since 2018 is to be found at pages 172-174 of the Trial Bundle, and is headed "UAL Short Courses Ltd Tutors/Online – Statement of Terms and Conditions". That document is set out as ANNEX A to this judgment.

65. Particular attention is drawn to **Clause 1**, which, under the sub-heading "Employer", states: "UAL Short Courses Ltd, 272 High Holborn, London, WC1V 7EY"; **Clause 3**, which, under the sub-heading "Date of commencement", provides: "3.1. Your employment commences in accordance with the schedule indicated on the HPAS2; 3.2. Continuous service will be determined in accordance with your statutory rights; 3.3. This contract is subject to a sufficient number of students enrolling for the classes you are required to teach."; **Clause 10**, which, under the sub-heading "Cancellation of Classes", provides: "10.1. Should it be necessary to suspend or cancel a class for reasons beyond the control of the company or the employee, UAL Short Courses shall, wherever possible, give you advance notice of any such suspension or cancellation. In consultation with you UAL Short Courses will normally expect to find a suitable alternative date or time for the class(es) concerned. Normally under such circumstances no additional payment will be made for the rearranged class. However, in exceptional circumstances (e.g. cancellation without notice, health and safety hazards, fire, etc.) an additional payment may be authorised by the Business Manager."; **Clause 13**, which, under the sub-heading "Work Outside the College", states: "Any employment with another employer should not interfere or conflict with your contractual duties for UAL Short Courses."; **Clause 20**, which, under the sub-heading "Re-engagement, Termination and Redundancy", provides: "20.1 The Contract will terminate automatically on the date of the final teaching session. It may, however, be terminated earlier in the following circumstances: 20.1.1 You may terminate the Contract at any time by giving UAL Short Courses 1 month written notice; 20.1.2 UAL Short Courses may terminate the Contract at any time by giving you a minimum of two weeks written notice; or in accordance with statutory provisions if continuous service is greater than 2 years; 20.1.3 UAL Short Courses may terminate the Contract without notice if you are found guilty of gross misconduct."; and **Clause 23**, which, under the sub-heading "Acceptance", states that: "Your response via email to accept the schedule of work also signifies your acceptance of the above terms".

66. Note is also taken of **Clause 4**, which sets out "Duties"; **Clause 5**, which provides for "Hours of work"; **Clause 6**, which specifies "Place of work", **Clause 7**, which deals with "Holidays"; and **Clause 8**, which contains provisions on "Salary".

67. It is clear from the evidence that all of the Lead Claimants were familiar with, and used, the HPS system to accept offers to teach on short courses. Indeed, as has been

explained, had this not been the case it would not have been possible to accept an offer and thereby to be incorporated into the payment system for delivery of those courses. This includes awareness of the "UAL Short Courses Ltd Tutors/Online – Statement of Terms and Conditions" generated through the system.

68. For the avoidance of doubt, the Tribunal finds this to be the case also for Ms Kalina Pulit, who claimed that she had "never received an employment contract" and that she was "not aware of any terms and conditions of employment". Her position to the effect that she was effectively ignorant of any of the "Terms and Conditions" – including in relation to key matters such as "Hours of work"; "Place of work", "Holidays"; and "Salary" – and that "Only recently I have noticed where they are within the system.", is quite implausible and the Tribunal does not accept her evidence to that effect.

"Collective Agreement" Incorporation?

69. Mention needs also to be made of what was described as a "collective agreement" between the Second Respondent and the University and College Union (UCU), headed "Hourly-Paid Academic Staff Security of Employment Agreement (2016)", which was included in the Trial Bundle at pages 3179-3183. This document was stated (at the foot of page 3183 of the Trial Bundle) to have been "jointly Agreed with UCU Regional office 05/02/16" by "Human Resources".

70. During the course of her submissions on behalf of the Lead Claimants (Day 6), Ms Whitehead submitted that this document was incorporated into the individual contracts of employment of the Lead Claimant tutors by reason of a cross-reference contained in a document headed "Hourly Paid Academic Staff (Associate Lecturers, Visiting Practitioners and Graduate Teaching Assistants) – Statement of Terms and Conditions HPAS/1" [Trial Bundle pages 3234-3235].

71. After considerable discussion between the respective representatives and the Employment Judge the Tribunal finds that this proposition is without merit.

72. First, the document at pages 3234-5 relates to categories of employee who are not those delivering UAL short courses.

73. Second, the "employer" referred to in the document is "University of the Arts London", and not the First Respondent. Ms Whitehead sought to overcome this problem by asserting that the First and Second Respondents are, in reality, "one and the same entity". This proposition was based upon the assertion that the two Respondents are "associated employers" within the meaning of **Section 231 of the Employment Rights Act 1996**, which provides that:

> For the purposes of this Act any two employers shall be treated as associated if —
> (a) one is a company of which the other (directly or indirectly) has control, or
> (b) both are companies of which a third person (directly or indirectly) has control;
> and "associated employer" shall be construed accordingly.

However, for the purposes of identifying "the employer" in relation to the employment protection rights claimed by the Lead Claimants, the status of the (in this case) respective legal entities – the First Respondent in this case is a limited company – is

determinative and the concept of "associated employer" does not enter the picture to alter that position.

74. Third, there is nothing in the contracts generated by the HPS portal system for tutors engaged to deliver short courses which serves to indicate incorporation of any other external document such as that at pages 3179-3183 of the Trial Bundle. In particular, there is no equivalent to the Clause 28.0 of the document at page 3235, which states that:

> Collective agreements of the Joint Negotiating Committee of Higher Education staff adopted by the University's Court of Governors, and those agreements made in the Academic Panel under the terms of the University's Recognition and Procedural Agreement, affect your terms and conditions of employment. These agreements can be found in the HR I-L.

75. Even if the external document were to be engaged, there is no evidence before the Tribunal that it constitutes a collective agreement "of the Joint Negotiating Committee of Higher Education staff adopted by the University's Court of Governors", or such an agreement "made in the Academic Panel under the terms of the University's Recognition and Procedural Agreement".

76. Nor is it clear what is envisaged by the expression "affect your terms and conditions of employment". That statement, without more, is not sufficiently certain to amount to the kind of incorporation term which Ms Whitehead argues for.

77. As a consequence, the Tribunal rejects the submission put forward on behalf of the Lead Claimants and finds that the external document at pages 3179-3183 of the Trial Bundle is not incorporated into the individual contracts of employment of any of the Lead Claimants to any extent.

THE APPLICABLE LAW

78. In relation to the issue of employment status, **Section 230 of the Employment Rights Act 1996** provides that:

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

(5) In this Act "employment" —
(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and
(b) in relation to a worker, means employment under his contract;
and "employed" shall be construed accordingly.

79. In relation to the right not to be unfairly dismissed contained in **Section 94 of the 1996 Act**, **Section 108 of the Employment Rights Act 1996** provides that:

Qualifying period of employment.

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

80. **Section 210 of the Employment Rights Act 1996** provides that:

Introductory.

(1) References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In any provision of this Act which refers to a period of continuous employment expressed in months or years —
(a) a month means a calendar month, and
(b) a year means a year of twelve calendar months.

(3) In computing an employee's period of continuous employment for the purposes of any provision of this Act, any question —
(a) whether the employee's employment is of a kind counting towards a period of continuous employment, or
(b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,
shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with section 211.

(4) Subject to sections 215 to 217, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

(5) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

81. **Section 211 of the Employment Rights Act 1996** provides that:

Period of continuous employment.

(1) An employee's period of continuous employment for the purposes of any provision of this Act —
(a) (subject to subsection (3)) begins with the day on which the employee starts work, and
(b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

(2) . . .

(3) If an employee's period of continuous employment includes one or more periods which (by virtue of section 215, 216 or 217) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the section in question.

82. **Section 212 of the Employment Rights Act 1996** provides that:

Weeks counting in computing period.

(1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

(2) . . .

(3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is —
(a) incapable of work in consequence of sickness or injury,
(b) absent from work on account of a temporary cessation of work, or
(c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose,
(d) . . .
counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under subsection (3)(a) between any periods falling under subsection (1).

83. **Section 213 of the Employment Rights Act 1996** provides that:

Intervals in employment.

(1) Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of subsection (1) of section 97 is treated for certain purposes as the effective date of termination by virtue of subsection (2) or (4) of that section, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 108(1) or 119(1) the period for which the employee has been continuously employed.

(2) Where an employee is by virtue of section 138(1) regarded for the purposes of Part XI as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, the period of the interval counts as a period of employment in ascertaining for the purposes of section 155 or 162(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under section 214 or 215).

(3) Where in the case of an employee a date later than the date which would be the relevant date by virtue of subsections (2) to (4) of section 145 is treated for certain purposes as the relevant date by virtue of subsection (5) of that section, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 155 or 162(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under section 214 or 215).

84. **Section 214 of the Employment Rights Act 1996** provides that:

Special provisions for redundancy payments.

(1) This section applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of section 155 or 162(1).

(2) The continuity of a period of employment is broken where —
(a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and
(b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).

(3) The continuity of a period of employment is also broken where —
(a) a payment has been made to the employee (whether in respect of the termination of his employment or lay-off or short-time) in accordance with a scheme under

section 1 of the Superannuation Act 1972 or arrangements falling within section 177(3), and

(b) he commenced new, or renewed, employment.

(4) The date on which the person's continuity of employment is broken by virtue of this section —

(a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in subsection (2)(a) or (3)(a), and

(b) if the employment was otherwise than under a contract of employment, is the date which would have been the relevant date in relation to the payment mentioned in subsection (2)(a) or (3)(a) had the employment been under a contract of employment.

(5) For the purposes of this section a redundancy payment shall be treated as having been paid if —

(a) the whole of the payment has been paid to the employee by the employer,

(b) a tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or

(c) the Secretary of State has paid a sum to the employee in respect of the redundancy payment under section 167.

85. In relation to the issue of whether any of the Lead Claimants was dismissed by the employer for the purposes of alleging unfair dismissal, **Section 95 of the Employment Rights Act 1996** provides that:

Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if) —

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if —

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

86. **Section 235 of the Employment Rights Act 1996** provides that:

Other definitions.

(2A) For the purposes of this Act a contract of employment is a "limited-term contract" if —

(a) the employment under the contract is not intended to be permanent, and

(b) provision is accordingly made in the contract for it to terminate by virtue of a limiting event.

(2B) In this Act, "limiting event", in relation to a contract of employment means —

(a) in the case of a contract for a fixed-term, the expiry of the term,

(b) in the case of a contract made in contemplation of the performance of a specific task, the performance of the task, and

(c) in the case of a contract which provides for its termination on the occurrence of an event (or the failure of an event to occur), the occurrence of the event (or the failure of the event to occur).

87. In relation to the claim of Mr Von Nordheim for a redundancy payment, the relevant part of **Section 135 of the Employment Rights Act 1996** provides that:

(1) An employer shall pay a redundancy payment to any employee of his if the employee —

(a) is dismissed by the employer by reason of redundancy, …

(2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

88. The relevant part of **Section 136 of the Employment Rights Act 1996** provides that:

(1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if) —

(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

…

(5) Where in accordance with any enactment or rule of law —

(a) an act on the part of an employer, or

(b) an event affecting an employer (including, in the case of an individual, his death),

operates to terminate a contract under which an employee is employed by him, the act or event shall be taken for the purposes of this Part to be a termination of the contract by the employer.

89. The relevant part of **Section 139 of the Employment Rights Act 1996** provides that:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to —

(a) the fact that his employer has ceased or intends to cease —

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business —

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

...

(4) Where —

(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,

he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

(5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

90. **Section 155 of the Employment Rights Act 1996** provides that:

An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

91. **Section 163 of the Employment Rights Act 1996** provides that:

(1) Any question arising under this Part as to —
(a) the right of an employee to a redundancy payment, or
(b) the amount of a redundancy payment,
shall be referred to and determined by an employment tribunal.

(2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

92. So far as the issue of "lay-off" and/or "short-time working entitlement is concerned, Section 147 of the **Employment Rights Act 1996** provides that:

Meaning of "lay-off" and "short-time".

(1) For the purposes of this Part an employee shall be taken to be laid off for a week if —
(a) he is employed under a contract on terms and conditions such that his remuneration under the contract depends on his being provided by the employer with work of the kind which he is employed to do, but
(b) he is not entitled to any remuneration under the contract in respect of the week because the employer does not provide such work for him.

(2) For the purposes of this Part an employee shall be taken to be kept on short-time for a week if by reason of a diminution in the work provided for the employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for the week is less than half a week's pay.

93. Section 148 of the **Employment Rights Act 1996** provides that:

Eligibility by reason of lay-off or short-time.

(1) Subject to the following provisions of this Part, for the purposes of this Part an employee is eligible for a redundancy payment by reason of being laid off or kept on short-time if —
(a) he gives notice in writing to his employer indicating (in whatever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (referred to in this Part as "notice of intention to claim"), and
(b) before the service of the notice he has been laid off or kept on short-time in circumstances in which subsection (2) applies.

(2) This subsection applies if the employee has been laid off or kept on short-time —
(a) for four or more consecutive weeks of which the last before the service of the notice ended on, or not more than four weeks before, the date of service of the notice, or
(b) for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen weeks, where the last week of the series before the service of the notice ended on, or not more than four weeks before, the date of service of the notice.

FINDINGS SPECIFIC TO THE LEAD CLAIMANTS

94. I now turn to my findings which are specific to each of the Lead Claimants. In approaching this part of the fact-finding exercise, I have sought first to identify the latest engagement before presentation of the Claim Form ET1 on 28 September 2020 (18 January 2022 for Mr Von Nordheim). Having analysed that relationship I have then looked at the preceding engagement and carried out a similar evaluation. Where necessary I have then worked backwards to evaluate other relevant engagements making up the individual Lead Claimant's employment history with either or both of the Respondents. I have limited the enquiry in the first instance to post-2018, which is when the complete data from the HPS system on-line portal is available (included in the Trial Bundle). However, where material is available for the pre-2018 period I have dealt with this where relevant in relation to each individual case.

Lead Claimant Mr Antonello Romano

95. I find that Mr Antonello Romano commenced working for London College of Communications in 2013. He described his activities as the teaching of a variety of short courses in the areas of Digital Marketing, User Experience and User Interface Design, Graphic and Web Design. Pay slips relating to Mr Romano are included in the Bundle at pages 1296-1481, the first of which, for the payment period ending 30 April 2013, shows payments described as "Artscom Payment". The last of these is for the payment period ending 31 March 2021 [pages 1480-1].

96. Mr Antonello Romano's most recent contracts with the First Respondent prior to presentation of the Claim Form ET1 on 28 September 2020 can be traced from the records at pages 490-503 of the Trial Bundle. These establish that he commenced delivery of a contract (C0023491) to teach a short course entitled "User Interface (UI) and Visual Design Online" on 16 March 2020. That course was delivered over 15 hours and ended on 18 March 2020. It was the last course which Mr Romano delivered face to face in that period.

97. On the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "User Interface (UI) and Visual Design Online" course. I find that Mr Romano accepted the contract through the HPS online portal and was accordingly included on the payroll and eventually paid in respect of his delivery of that course (as confirmed at pages 490-1 and 1458-9 of the Trial Bundle). I find this also to have been the case in relation to the contracts entered into by Mr Romano with the First Respondent subsequent to 18 March 2020.

98. Mr Romano described in his witness statement (paragraph 2) the process by which he was approached each year with a view to future teaching contracts, which would eventually result in a contract being issued and teaching being delivered. In light of his acknowledged familiarity with the system and the associated arrangements, I find on a balance of probabilities that Mr Romano must have been aware of the "Statement of Terms and Conditions" and that he accepted those.

99. Paragraph 20.1 of the "Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

I find that the contract for the course entitled "User Interface (UI) and Visual Design Online" commenced on 16 March 2020 and terminated on 18 March 2020. I find that this was therefore a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of his limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 18 March 2020.

100. The records between pages 492-503 of the Trial Bundle also show that Mr Romano entered into a series of further contracts to deliver short courses. These were undertaken following the suspension of face-to-face teaching by reason of the lockdown being imposed because of the Covid 19 pandemic. Correspondence in relation to that situation arising from 23 March 2020 onwards can be seen in the Bundle, including the circular notification to staff sent on 18 March 2020 announcing "Suspension of UAL short courses due to coronavirus" [page 736].

101. These contracts were C0025555 [pages 492-3] between 20-24 March 2002; C0025558 [pages 494-5] between 27 April - 1 May 2020; C0025559 [pages 496-7] between 11-15 May 2020; C0026292 [pages 498-9] between 27 June - 11 July 2020; C0026911 [pages 500-1] between 20-22 July 2020; and C0027947 [pages 502-3] between 6-10 July 2020.

102. Payments in respect of C0025555 were made under the heading "SC Standard Pay" [pages 1458-9]; for C0025558 [pages 1460-1]; for C0025559 [pages 1460-1]; for C0026292 [pages 1464-5]; for C0026911 [pages 1466-7]; and for C0027947 [pages 1468-9]. It is common ground that the First Respondent made payments in full in relation to contracts already made but cancelled at short notice by reason of the lockdown imposition. It is also common ground, as described by Mr Romano in his witness statement, that some teaching was conducted online (see paragraph 3).

103. Taking all of those contracts into account, I find that all of them were "limited-term" contracts as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of each of these limited-term contracts constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. I find that the "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) in relation to the last of these was 10 July 2020.

104. It is Mr Romano's case that he was dismissed on 5 June 2020. This requires me to consider contract C0025559 [pages 496-7] which was performed by Mr Romano between 11-15 May 2020. This was for a course entitled "User Experience (UX) Design: Lean Methodology" in respect of which the effective date of termination was 15 May 2020.

105. The most recent earlier contract (C0025558) with the First Respondent prior to the short course entitled "User Experience (UX) Design: Lean Methodology" on 11

May 2020 can be found from the documentation at pages 494-5 and 1460-1 of the Trial Bundle. These establish that he commenced delivery of a contract to teach a course entitled "Digital Marketing Strategy" on 27 April 2020. That course was delivered over 25 hours and ended on 1 May 2020. Payment for that course was made thereafter.

106. I have addressed the question of what happened in the period between the termination of the contract to deliver the "Digital Marketing Strategy" course on 1 May 2020 and the date on which Mr Roman commenced teaching of the "User Experience (UX) Design: Lean Methodology" course on 11 May 2020. The answer is that there is no evidence of him having been employed by the First Respondent during that period.

107. I find that there is no evidence to indicate that this period could be said to have constituted a period when Mr Romano was "absent from work on account of a temporary cessation of work" (as provided for by **Section 212(3)(b) of the Employment Rights Act 1996**). Nor, for completeness, do I find any evidence leading me to the view that Mr Romano was "absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose" (as provided for by **Section 212(3)(c) of the Employment Rights Act 1996**).

108. Rather, I find that the period between 1 May 2020 and 11 May 2020 included a week (namely, the week commencing on Sunday 3 May 2020 and ending on Saturday 9 May 2020) which does not count in computing time as provided for in **Section 212 of the Employment Rights Act 1996**. In making this finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this week does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the week commencing on Sunday 3 May 2020 and ending on Saturday 9 May 2020 breaks continuity of employment.

109. I therefore find that, notwithstanding the presumption contained in **Section 210(5) of the Employment Rights Act 1996**, there was no continuity of employment between the termination of the "Digital Marketing Strategy" course on 1 May 2020 and the commencement of the contract to deliver the "User Experience (UX) Design: Lean Methodology" on 11 May 2020.

110. It follows that Mr Romano does not have sufficient continuous employment with the First Respondent to entitle him to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (by reference to **Section 135 of the Employment Rights Act 1996**).

Lead Claimant Ms Irene Montero-Sabin

111. I find that Ms Montero-Sabin commenced working for Artscom in 2016, with her first short class ("Modern Art History") starting on 7 October 2016.

112. Ms Montero-Sabin is a PhD student and has an academic career, having taught in what she described as "other higher education organisations". She also teaches "European Art History" as a Study Abroad Tutor (since September 2019) for the Strategic Development department of the Second Respondent. In addition, she works in a self-employed capacity for a private tuition company (not either of the Respondents).

113. Ms Montero-Sabin's most recent contract with the First Respondent (C0019744) prior to presentation of the Claim Form ET1 on 28 September 2020 can be traced from the records at pages 243, 246 and 251 of the Trial Bundle. These establish that she commenced delivery of a contract to teach a course entitled "Modern Art History" on 10 January 2020. That course was delivered over 25 hours and ended on 13 March 2020.

114. On the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "Modern Art History" course. Ms Montero-Sabin told the Tribunal during cross-examination that she always received an email asking her to confirm a forthcoming course offer, and I find that she accepted the contract through the HPS online portal and was accordingly included on the payroll and eventually paid in respect of her delivery of that course (as confirmed at pages 251 and 1899-1902 of the Trial Bundle).

115. In light of her acknowledged familiarity with the system and the associated arrangements, I find on a balance of probabilities that Ms Montero-Sabin must have been aware of the "Statement of Terms and Conditions" and that she accepted those.

116. Paragraph 20.1 of the "Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

I find that the contract for the course entitled "Modern Art History" commenced on 10 January 2020 and terminated on 13 March 2020. I find that this was therefore a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of her limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 13 March 2020.

117. The most recent earlier contract (C0010492) with the First Respondent prior to the "Modern Art History" course in the Winter of 2020 can be found from the documentation at pages 243, 245 and 251 of the Trial Bundle. These establish that Ms Montero-Sabin commenced delivery of a contract to teach a course entitled "Modern Art History" on 26 April 2019. That course was delivered over 25 hours and ended on 28 June 2019.

118. For the reasons already indicated I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "Modern Art History" course. I find that Ms Montero-Sabin accepted the contract and was

accordingly included on the payroll and eventually paid in respect of her delivery of that course (as confirmed at page 251 of the Trial Bundle). I find that this contract was also a limited-term contract as defined within **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of her limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 28 June 2019.

119. I have addressed the question of what happened in the period between the termination of the contract to deliver the "Modern Art History" course on 28 June 2019 and the commencement of the contract to deliver the "Modern Art History" on 10 January 2020. The answer is that there is no evidence of Ms Montero-Sabin having been employed by the First Respondent at any time during that period.

120. I find that there is no evidence to indicate that this period could be said to have constituted a period when Ms Montero-Sabin was "absent from work on account of a temporary cessation of work" (as provided for by **Section 212(3)(b) of the Employment Rights Act 1996**). Nor, for completeness, do I find any evidence leading me to the view that Ms Montero-Sabin was "absent from work in circumstances such that, by arrangement or custom, she is regarded as continuing in the employment of her employer for any purpose" (as provided for by **Section 212(3)(c) of the Employment Rights Act 1996**).

121. I find that the period between 28 June 2019 and 10 January 2020 included weeks which do not count in computing time as provided for in **Section 212 of the Employment Rights Act 1996**. In making this finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this period does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the period between 28 June 2019 and 10 January 2020 breaks continuity of employment.

122. I therefore find that, notwithstanding the presumption contained in **Section 210(5) of the Employment Rights Act 1996**, there was no continuity of employment between the termination of the "Modern Art History" course on 28 June 2019 and the commencement of the contract to deliver the "Modern Art History" course on 10 January 2020.

123. It follows that Ms Montero-Sabin does not have sufficient continuous employment with the First Respondent to entitle her to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (by reference to **Section 135 of the Employment Rights Act 1996**).

124. In summary, therefore, I find that Ms Montero-Sabin was, most recently prior to the presentation of the Claim Form ET1, employed by the First Respondent to deliver short course non-award-bearing contracts.

125. Ms Montero-Sabin was also employed under entirely separate contractual arrangements as a Study Abroad Tutor. The contractual relationship in respect of that programme has been with the Second Respondent.

126. Ms Montero-Sabin has given detailed evidence concerning the arrangements for her employment, the extent of direction given by the First Respondent, the administrative framework within which her courses were delivered, and the way in which matters such as pay, pension, sickness and holiday were managed. Evidence has also been produced in the Trial Bundle relating to pay slips, P60s and related pay documents, as well as in relation to computer access, email facilities and ID cards. On the basis of that evidence I find that during the time when she was delivering short course non-award-bearing contracts Ms Montero-Sabin was an "employee" of the First Respondent within the meaning of **Section 230(1) of the Employment Rights Act 1996**.

127. Ms Montero-Sabin's last two engagements prior to presentation of the Claim Form ET1 on 28 September 2020 were in relation to the "Modern Art History" course which commenced on 26 April 2019 and the contract to deliver the "Modern Art History" course which commenced on 10 January 2020. The 2019 "Modern Art History" contract was terminated on the expiry of the limited-term contract, thereby constituting a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996** in respect of which the effective date of termination was 28 June 2019. I find that the period between 26 April 2019 and 10 January 2020 included weeks which do not count in computing time as provided for in **Section 212 of the Employment Rights Act 1996**. In making this finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this period does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the period between 28 June 2019 and 10 January 2020 breaks continuity of employment.

128. It therefore follows that Ms Montero-Sabin does not have sufficient continuous employment with the First Respondent to entitle her to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (**by reference to Section 135 of the Employment Rights Act 1996**).

129. I accept the unchallenged evidence from Ms Montero-Sabin, which is consistent with evidence given by Ms Kelly, that Ms Montero-Sabin received "furlough" payments in May 2020 and into 2021. However, I find that those were not connected in any way with employment for the First Respondent. She has also continued to work for the Second Respondent on the Study Abroad programme.

Lead Claimant Ms Suky Best

130. I find that Ms Best commenced working for the DALI department of The London Institute in 1996. No precise starting date has been established and, although there was mention during discussion related to final submissions of a date of 5 August 1995, there is no evidence to support that as being the date of commencement.

131. Ms Best subsequently worked for the Artscom department and, latterly, for the First Respondent. A Schedule purporting to show the "Pattern of Employment with Artscom/UAL short courses" between 2012 and 2020 has been included in the Trial Bundle at pages 3147-3149 although this was not specifically alluded to during evidence or submissions.

132. Ms Best has also worked for other bodies, including the London College of Printing and, since 2016, as an Associate Lecturer on the MA Contemporary Photography: Philosophies and Practices (CPPP) at Central St Martins.

133. Ms Best's most recent contract with the First Respondent (C0019544) prior to presentation of the Claim Form ET1 on 28 September 2020 can be discerned from the records at pages 191, 194 and 200 of the Trial Bundle. These establish that she commenced delivery of a contract to teach a weekend course entitled "Applied Surface Design using Adobe Illustrator and Photoshop" on 29 February 2020. That course was delivered over two days and ended on 1 March 2020.

134. On the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "Applied Surface Design using Adobe Illustrator and Photoshop" course. I find that Ms Best accepted the contract (in the manner described in her witness statement at paragraph 6) and was accordingly included on the payroll and eventually paid in respect of her delivery of that course (as confirmed at pages 206 and 1786-7 of the Trial Bundle).

135. In light of her acknowledged familiarity with the system and the associated arrangements, I find on a balance of probabilities that Ms Best must have been aware of the "Statement of Terms and Conditions" and that she accepted those.

136. Paragraph 20.1 of the "Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

I find that the contract for the weekend course entitled "Applied Surface Design using Adobe Illustrator and Photoshop" commenced on 29 February 2020 and terminated on 1 March 2020. I find that this was therefore a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of her limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 1 March 2020.

137. The most recent earlier contract (C0013762) with the First Respondent prior to the weekend course entitled "Applied Surface Design using Adobe Illustrator and Photoshop" on 29 February 2020 can be found from the documentation at pages 189, 193 and 198 of the Trial Bundle. These establish that she commenced delivery of a contract to teach a course entitled "Maximum Photoshop" on 19 August 2019. That course was delivered over five days and ended on 23 August 2019.

138. For the reasons already indicated I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "Maximum Photoshop" course. I find that Ms Best accepted the contract (in the manner described in her witness statement at paragraph 6) and was accordingly included on the payroll and eventually paid in respect of her delivery of that course (as confirmed at pages 206 and 1774-5 of the Trial Bundle). I find that this contract was also a limited-term contract as defined within **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of her limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 23 August 2019.

139. I have addressed the question of what happened in the period between the termination of the contract to deliver the "Maximum Photoshop" course on 23 August 2019 and the commencement of the contract to deliver the "Applied Surface Design using Adobe Illustrator and Photoshop" on 29 February 2020. The answer is that there is no evidence of Ms Best having been employed by the First Respondent at any time during that period.

140. I find that there is no evidence to indicate that this period could be said to have constituted a period when Ms Best was "absent from work on account of a temporary cessation of work" (as provided for by **Section 212(3)(b) of the Employment Rights Act 1996**). Nor, for completeness, do I find any evidence leading me to the view that Ms Best was "absent from work in circumstances such that, by arrangement or custom, she is regarded as continuing in the employment of her employer for any purpose" (as provided for by **Section 212(3)(c) of the Employment Rights Act 1996**).

141. I find that the period between 23 August 2019 and 29 February 2020 included weeks which do not count in computing time as provided for in **Section 212 of the Employment Rights Act 1996**. In making this finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this period does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the period between 23 August 2019 and 29 February 2020 breaks continuity of employment.

142. In summary, therefore, I find that Ms Best was, most recently prior to the presentation of the Claim Form ET1, employed by the First Respondent to deliver short course non-award-bearing contracts.

143. From her unchallenged evidence concerning other aspects of her activities I conclude that she was also employed under entirely separate contractual arrangements as an Associate Lecturer on an MA course at Central St Martins. The contractual relationship in respect of that degree-awarding programme has been with the Second Respondent.

144. Ms Best has given detailed evidence concerning the arrangements for her employment, the extent of direction given by the First Respondent, the degree of autonomy left to her by reason of her professional skill-set, the administrative framework within which her courses were delivered, and the way in which matters such as pay, pension, sickness and holiday were managed. Evidence has also been produced in the Trial Bundle relating to pay slips, P60s and related pay documents. [see pages 3246-3253], as well as in relation to computer access, email facilities and ID cards. On the basis of that evidence I find that during the time when she was delivering short course non-award-bearing contracts Ms Best was an "employee" of the First Respondent within the meaning of **Section 230(1) of the Employment Rights Act 1996**.

145. Ms Best's last two engagements prior to presentation of the Claim Form ET1 on 28 September 2020 were in relation to the "Maximum Photoshop" course on 23 August 2019 and the contract to deliver the "Applied Surface Design using Adobe Illustrator and Photoshop" which commenced on 29 February 2020. The "Maximum Photoshop" contract was terminated on the expiry of the limited-term contract, thereby constituting a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996** in respect of which the effective date of termination was 23 August 2019. The continuity of employment of Ms Best was broken by the interval between those two engagements.

146. It therefore follows that Ms Best does not have sufficient continuous employment with the First Respondent to entitle her to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (**by reference to Section 135 of the Employment Rights Act 1996**).

147. I accept the unchallenged evidence from Ms Kelly that Ms Best received "furlough" payments in May 2020 and in 2021. However, I find that those were not connected in any way with employment for the First Respondent. I also accept the unchallenged evidence that she continued to work for the Second Respondent on the MA Contemporary Photography: Philosophies and Practices (CPPP) course until May 2021.

Lead Claimant Ms Belgin Vehbi

148. I find that Ms Vehbi commenced working for the London College of Fashion on 7 January 2008, having been appointed by a letter dated 14 November 2007. Ms Vehbi subsequently worked for the Artscom department and, latterly, for the First Respondent. On one occasion she taught on an award-bearing BA Fashion Design course for the Second Respondent.

149. Ms Vehbi's most recent contract with the First Respondent (C0022911) prior to presentation of the Claim Form ET1 on 28 September 2020 is identified from the records at page 3044 of the Trial Bundle. These establish that she had entered into a contract to teach a course entitled "3D Draping Module 1" on 23 March 2020. That course was to be delivered over 30 hours and to have ended on 27 March 2020. However, as described at paragraph 22 of her witness statement, the course was cancelled by reason of the Covid pandemic and closure of the site buildings.

150. On the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "3D Draping Module 1" course. I find that Ms Vehbi accepted the contract and was accordingly included on the payroll.

151. In light of her acknowledged familiarity with the system and the associated arrangements, I find on a balance of probabilities that Ms Vehbi must have been aware of the "Statement of Terms and Conditions" and that she accepted those.

152. As set out at paragraph 25 of her witness statement, notwithstanding the course not running, Ms Vehbi was eventually paid by the First Respondent. In her words:

> I received payment in full as I had signed the contract, I was told they would honour the contract and pay me in full…

153. Paragraph 20.1 of the "UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

That provision was, however, overtaken in this case by the cancellation of the course and discharge through payment of the contractual sum due.

154. Note is also taken of the provision at Paragraph 10.1 of the "UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions" which provides that:

> Should it be necessary to suspend or cancel a class for reasons beyond the control of the company or the employee, UAL Short Courses shall, wherever possible, give you advance notice of any such suspension or cancellation. In consultation with you UAL Short Courses will normally expect to find a suitable alternative date or time for the class(es) concerned. Normally under such circumstances no additional payment will be made for the rearranged class. However, in exceptional circumstances (e.g. cancellation without notice, health and safety hazards, fire, etc.) an additional payment may be authorised by the Business Manager.

155. I asked the respective representatives to address me on the issue of whether in these circumstances the contract might be said to have come to an end by operation of law – what is known as the doctrine of "frustration". This included addressing the question of whether a termination of a contract of employment "by operation of law" (through the doctrine of frustration) would necessarily take such a termination outside the definition of "dismissal" contained in **Section 95 of the Employment Rights Act 1996**.

156. After discussion and consideration of submissions made in that regard on Day 7 of the hearing, I came to the view that this was not a case which fell within the principles laid down by the House of Lords in the case of **Davis Contractors v. Fareham UDC, [1956] AC 696**. In that case, Lord Radcliffe traced the history of the doctrine and opined (at page 729) that:

> …frustration occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract.

157. In reaching my conclusion I have had regard to cases in the employment field where the doctrine has been considered, including, in particular, the comments of HHJ Richardson in the Employment Appeal Tribunal case of **Warner v. Armfield Retail and Leisure Ltd, [UKEAT/0376/12/SM]**, where he pointed out that:

> …it has been applied to contracts of employment in cases concerned with imprisonment and illness, and that the leading cases are **Marshall v. Harland & Wolff [1972] IRLR 90**; **Egg Stores (Stamford Hill) Limited [1976] IRLR 376**; **Hart v. AR Marshall & Sons [1977] IRLR 51** and **Notcutt v. Universal Equipment Co (London) Limited [1986] IRLR 218** (a decision of the Court of Appeal confirming that the doctrine was applicable to contracts of employment which were terminable by short notice).

158. I have also noted that the issue has recently been addressed in relation to the impact of Covid, in the Common Law jurisdiction of Canada, where the case of **Fanzone v. 516400 BC Ltd, [2022] BCSC 2089** made reference to a decision of the British Columbia Supreme Court in **Verigen v. Ensemble Travel Ltd, [2021] BCSC 1934**, holding that in the circumstances of that case, performance of the plaintiff's employment contract had not been rendered impossible by the pandemic, thereby excluding a potential defence based upon the doctrine of frustration of the contract.

159. Upon reflection I find that the contract for the "3D Draping Module 1" course was discharged by payment of the full contractual sum by the First Respondent rather than, as had originally been envisaged, through performance by Ms Vehbi.

160. That contract had been due to commence on 23 March 2020 and to terminate on 27 March 2020. I find that when it was entered into this was a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. However, I find that the termination of the contract in the context of the Covid pandemic came about by way of a "dismissal" by the First Respondent within the meaning of **Section 95(1)(a) of the Employment Rights Act 1996**.

161. At first glance the "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) would appear to be the date on which Ms Emily Mentor emailed Ms Vehbi to say that courses would be cancelled – namely, 17 March 2020 [Trial Bundle page 2487]. However, that email states: "If you have received your contract to teach please rest assured that this will be honoured and you will receive payment for your scheduled teaching". That reference to "scheduled teaching", rather than "actual performed teaching" allows for an alternative reading of the position – namely, that the "schedule" remained in place, even though the actual teaching would not take place. On that basis, therefore, given that Ms Vehbi had received her contract to teach, I find that the effective date of termination for the "3D Draping Module 1" course contract was the originally envisaged termination date for the limited-term contract entered into through the HPS system – namely, 27 March 2020.

162. The most recent earlier contract (C0017129) between Ms Vehbi and the First Respondent prior to the 2020 "3D Draping Module 1" course which had been due to commence on 23 March 2020 can be found from the documentation at pages 228 and 3042 of the Trial Bundle. These establish that she commenced delivery of a contract to teach a course entitled "Urban Outfitters – Pattern Cutting" on 23 October 2019. That course was delivered over 5 hours during one day.

163. For the reasons already indicated I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to that "Urban Outfitters – Pattern Cutting" course. I find that Ms Vehbi accepted the contract and was accordingly included on the payroll and eventually paid in respect of her delivery of that course. I find that this contract was also a limited-term contract as defined within **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of her limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 23 October 2019.

164. I have addressed the question of what happened in the period between the termination of the contract to deliver the "Urban Outfitters – Pattern Cutting" course on 23 October 2019 and the intended commencement date for the contract to deliver the ""3D Draping Module 1" course on 23 March 2020. The answer is that there is no evidence of Ms Vehbi having been employed by the First Respondent at any time during that period.

165. I find that there is no evidence to indicate that this period could be said to have constituted a period when Ms Vehbi was "absent from work on account of a temporary cessation of work" (as provided for by **Section 212(3)(b) of the Employment Rights Act 1996**). Nor, for completeness, do I find any evidence leading me to the view that Ms Vehbi was "absent from work in circumstances such that, by arrangement or custom, she is regarded as continuing in the employment of her employer for any purpose" (as provided for by **Section 212(3)(c) of the Employment Rights Act 1996**).

166. I find that the period between 23 October 2019 and 23 March 2020 included weeks which do not count in computing time as provided for in **Section 212 of the Employment Rights Act 1996**. In making this finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this period does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the period between 23 October 2019 and 23 March 2020 breaks continuity of employment.

167. In summary, therefore, I find that Ms Vehbi was, most recently prior to the presentation of the Claim Form ET1, employed by the First Respondent to deliver short course non-award-bearing contracts.

168. Ms Vehbi has given detailed evidence concerning the arrangements for her employment, the extent of direction given by the First Respondent, the degree of autonomy left to her by reason of her professional skill-set, the administrative framework within which her courses were delivered, and the way in which matters such as pay, pension, sickness and holiday were managed. Evidence has also been produced (through a number of supplementary "Appendices" which were incorporated into the Trial Bundle) relating to pay slips, P60s and related pay documents, as well as in relation to computer access, email facilities and ID cards. On the basis of that evidence I find that during the time when she was delivering short course non-award-

bearing contracts Ms Vehbi was an "employee" of the First Respondent within the meaning of **Section 230(1) of the Employment Rights Act 1996**.

169. Ms Vehbi's last two engagements prior to presentation of the Claim Form ET1 on 28 September 2020 were in relation to the "Urban Outfitters – Pattern Cutting" course on 23 October 2019 and the contract to deliver the ill-fated "3D Draping Module 1" course which had been due to commence on 23 March 2020.

170. The "Urban Outfitters – Pattern Cutting" contract was terminated on the expiry of the limited-term contract, thereby constituting a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996** in respect of which the effective date of termination was 23 October 2019. I find that the continuity of employment of Ms Best was broken by the interval between those two engagements.

171. It therefore follows that Ms Vehbi does not have sufficient continuous employment with the First Respondent to entitle her to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (**by reference to Section 135 of the Employment Rights Act 1996**).

Lead Claimant Ms Kalina Pulit

172. I find that Ms Pulit commenced working for the First Respondent, UAL Short Courses, in August 2017. A schedule prepared for these proceedings of courses taught [pages 3087-3092 of the Trial Bundle – duplicating pages 3065-3070] indicates a "PR & Marketing" course (15 hours) between 16-18 August 2017, and a wide range of short course teaching thereafter.

173. Ms Pulit also gave evidence that she worked – at the same time as her contracts with the First and Second Respondents – as "a freelancer working as a creative director, photographer and filmmaker, working for external clients and organisations".

174. Correspondence in relation to the first August 2017 engagement can be seen at pages 3220-3 with a follow-up "Engagement Schedule" and "Terms and Conditions of Employment" offer sent with a covering email on 8 August 2017 [page 3219]. The provision of this documentation on 8 August 2017 contradicts the proposition in Ms Pulit's witness statement to the effect that "I was never given an employment contract" (paragraph 3) and her further statement that "I am just shocked that there was never any employment contract. I was never issued with terms and conditions." (paragraph 7), as well as statements to similar effect at paragraph 10 of her Witness Statement.

175. Email correspondence at B/2623 and B/2624 demonstrates the manner in which subsequent engagements were offered and agreed thereafter. There is also correspondence at B/3224-8 showing a similar pattern of discussion prior to engagement for teaching in 2018 on a proposed course entitled "Transmedia Storytelling".

176. Pay slips headed "UAL" dated between 20 December 2012 [pages 2079-80] and 31 July 2017 [pages 2163-4] demonstrate that Ms Pulit had previously undertaken teaching for the Second Respondent in that period. Those pay slips show that the

service undertaken in that period was pensionable (with employer contributions) and attracted entitlement to holiday pay. Ms Pulit described to the Tribunal how she had:

> worked with the UAL Outreach (rebranded as UAL Insights) as a digital curator between Jan 2016 and Dec 2017.

177. Pay slips dated 31 August 2017 [pages 2165-6] and subsequently up until February 2018 show a similar pattern of engagements with the Second Respondent, together with payments of sums described as "Artscom Standard Rate" which, from the cross-referencing course code numbers, can be seen to relate to short courses organised through the First Respondent.

178. Latterly, the pay slips (with the exception of a payment described as "Z Artscom Technician Rate" [at pages 2187-8] only show payments by reference to "Artscom Standard Rate" (with cross-referencing to the relevant contract numbers) [pages 2179-2204] covering the period from March 2018 until March 2019.

179. The pay slips from April 2019 (with the exception of one for June 2019 [pages 2211-2] relating to Contract C0011953, and one for July 2019 [pages 2213-4] relating to Contract C0013472) are headed "ual:short courses". A pay slip headed "UAL" for August 2019 [pages 2219-20] makes reference to payment in relation to Contracts LZ0AF001 and LZ0AF012, together with payments in respect of "HPL English Plus" under Contract no. C00113473. Similarly, a "UAL" headed pay slip for February 2020 [pages 2235-6] shows payment in relation to Contract C0019890 ("HPL English Plus"), as does a pay slip for March 2020 [pages 2237-8].

180. Pay slips headed "ual:short courses" for the payment period ending 31 March 2020 onwards [See pages 2239 onwards] show that Ms Pulit was paid in respect of "SC Standard Pay" throughout the period following the imposition of lockdown by reason of the COVID pandemic. These, as she acknowledges in her Witness Statement, relate to teaching on short courses which were capable of being delivered on-line, which comprised a part of the total suite of short course contracts undertaken by Ms Pulit.

181. At paragraph 10 of her witness statement Ms Pulit claimed that:

> I was not aware of any terms and conditions of employment. I was never sent any terms and conditions. When I log into the online system to accept the hours contracted per course, terms & conditions are not visible. Only recently I have noticed where they are within the system. When I work as a freelancer, there is a contract between the client and myself or a production house/agency if there is one involved. I have also had smaller contracts, which I have had to sign. I am really shocked now that I was never given anything from the UAL relating to short courses. I have only been made aware recently of changes to terms and conditions issued in April 2020 via the dialogue between the tutors thanks to UCU. Otherwise I wouldn't have known. The UALSC are seeking to impose a clause entitling them to use our Intellectual Property. That IP belongs to the tutors who create it. We create the IP in our own time, and we do not get paid for it. There is no one for the tutors to seek advice from. We do not have access to HR that we can talk with.

182. Ms Pulit told the Tribunal during the course of her cross-examination that she was only aware of the on-line engagement system for short course teaching with the First Respondent on having this drawn to her attention during this hearing.

183. It is Ms Pulit's case that she was dismissed on 5 June 2020. However, she accepted in cross-examination that she has "since continued to work on courses". She accepted that from 6 June 2020 she was "teaching on two separate courses". Pay slips and associated documents in relation to the relevant pay periods from March 2020 onwards have been included with the documentation in the trial bundle [pages 2079-2283].

184. Ms Pulit acknowledged that some of her courses were taught face to face while others were delivered on-line, and that this had been the case "even before the pandemic". Ms Pulit has sought to distinguish between the face to face courses, from which she says she was dismissed, and the on-line provision, which she claims should be regarded as separate and different.

185. I find that the proposition that Ms Pulit was never sent any terms and conditions is directly contradicted by the evidence in relation to her engagement over the course of email correspondence on 8 August 2017.

186. So far as the proposition that Ms Pulit was unaware of the terms and conditions under which she was engaged to teach short courses by the First Respondent I find this implausible.

187. Ms Pulit has shown herself to be an intelligent person who pays close attention to detail. She has also demonstrated how she joined the UCU trade union and has been active within that organisation.

188. At paragraph 28 of her Witness Statement she states that:

> When I log into the UAL hourly paid system, I have access to all of the contracts for each course I have worked. For some courses I am named as a Visiting Practitioner and for some I am an Hourly Paid Lecturer, and then I am also a UAL SC tutor. Once on the system I can download the contract.

189. In the light of Ms Pulit's confusing, and sometimes self-contradictory, evidence, I find on the balance of probabilities that Ms Pulit was regularly contracting with the First Respondent to undertake short course teaching from at least 2018 and onwards [See pages 252 following]. I find that those engagements were entered into through the use of the on-line portal engagement system, and that the contracts entered into were on standard terms as generated through that system. I find that Ms Pulit had ready access to the detailed terms and conditions under which she was contracting, and was clearly aware of where the documentation could be located. I do not accept that she was either unaware of those terms and conditions or had not had them provided to her by the First Respondent.

190. I find that, in addition to limited term contracts entered into with the First Respondent, Ms Pulit from time to time was also engaged under separate contracts to undertake teaching for the Second Respondent. Those separate arrangements were entirely independent of the First Respondent, which would appear to explain the occasional appearance in the trial bundle of pay slips headed "ual" – although the regular pay slips produced in that bundle were, from April 2019 onwards, headed "ual: short courses" and made reference to short course contracts organised through the First Respondent. The existence of separate additional contracts with the Second

Respondent is not something which alters the nature of the contracts made between Ms. Pulit and the First Respondent. Nor is there any reason why there should not be two perfectly valid sets of contracts with different employers.

191. It follows from this that I find that Ms Pulit, in so far as non-award bearing short courses are concerned, was employed by the First Respondent. She was employed on contracts in standard form as generated by the on-line portal system. The terms and conditions set out for those engagements can be seen at pages 172-174.

192. Ms Pulit's most recent contracts with the First Respondent prior to presentation of the Claim Form ET1 on 28 September 2020 can be identified from the records at pages 370-1, 374-5 and 376-7 of the Trial Bundle. These establish that she had entered into a contract (C0027752) to teach an online short course entitled "Multimedia Storytelling" on 19 August 2020. That course was delivered over 9 hours and ended on 9 September 2020. She had also entered into a contract (C0027930) to teach another online short course entitled "Social Media Strategy for Fashion" on 8 September 2020. That course was due to be taught over 9 hours and to end on 29 September 2020. In addition, she had entered into a further contract (C0027938) to teach another online short course entitled "Multimedia Storytelling" on 12 September 2020. That course was due to be taught over 9 hours and to end on 3 October 2020.

193. On the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to the "Multimedia Storytelling" course and the "Social Media Strategy for Fashion" course. I find that Ms Pulit accepted the contract and was accordingly included on the payroll.

194. For reasons already alluded to, I find on a balance of probabilities that Ms Pulit must have been aware of the "Statement of Terms and Conditions" and that she accepted those.

195. Paragraph 20.1 of the "Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

I find that the contract (C0027752) to teach an online short course entitled "Multimedia Storytelling" was delivered and ended on 9 September 2020. I find that this was therefore a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of this limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 9 September 2020.

196. I further find that the contract (C0027930) to teach an online short course entitled "Social Media Strategy for Fashion" on 8 September 2020 was being performed and had not terminated as of the date when the Claim Form ET1 was presented (28 September 2020). The same was the case in relation to the contract (C0027938) to teach an online short course entitled "Multimedia Storytelling".

197. The most recent contracts between Ms Pulit and the First Respondent prior to the online short course entitled "Multimedia Storytelling" on 19 August 2020 can be seen from the documentation at pages 362-369 of the Trial Bundle. These show a number of separate contracts, some of which were being performed in parallel by Ms Pulit. It is common ground that Ms Pulit continues to enter into (and to perform) contracts to deliver short courses. I have found that those contracts are with the First Respondent as her employer.

198. Given that it is Ms Pulit's case that she was dismissed on 5 June 2020, I make the following findings in relation to that alleged date of dismissal.

199. Ms Pulit had contracted to deliver a short course (C0025858) entitled "Digital Marketing Strategy" over 25 hours commencing on 1 June 2020 and ending on 5 June 2020. This emerges from page 360 of the Trial Bundle, while page 361 records that five hours were paid for on each of the five days between 1 – 5 June 2020.

200. Prior to this, Ms Pulit performed a contract (C0025010) to deliver a short course entitled "Multimedia Storytelling" which commenced on 6 May 2020 and ended on 27 May 2020 [pages 354-355]. Those documents establish that the course was delivered over 9 hours on four consecutive Wednesdays between those dates.

201. This was preceded by a contract (C0024047) to deliver a short course entitled "Creative Direction for Digital Media", which commenced on 14 April 2020 and ended on 5 May 2020 [pages 352-3].

202. The previous contract to this (C0022637) was for a short course entitled "Digital Marketing Strategy" which was delivered over 15 hours commencing on 23 March 2020 and ending on 27 March 2020 [pages 348-9].

203. For the reasons set out above, on the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that bespoke versions of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") were generated in relation to each of the courses covered by contract numbers C0025858, C0025010, C0024047 and C0022637.

204. I find on a balance of probabilities that Ms Pulit must have been aware of the "Statement of Terms and Conditions" and I find that Ms Pulit accepted each of these contracts and was accordingly included on the payroll and paid for each of them. Paragraph 20.1 of the "Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

205. I find that contract C0025858 to teach a short course entitled "Digital Marketing Strategy" was delivered and ended on 5 June 2020. I find that this was a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of this limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 5 June 2020.

206. I find that performance of contract C0025010 to teach a short course entitled "Multimedia Storytelling" commenced on 6 May 2020 and ended on 27 May 2020. That course was delivered over 9 hours on four consecutive Wednesdays between those dates. I find that this was a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of this limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 27 May 2020.

207. I find that contract C0024047 to deliver a short course entitled "Creative Direction for Digital Media", commenced on 14 April 2020 and ended on 5 May 2020. The course was taught over nine hours between those dates. I find that this was a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of this limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 5 May 2020.

208. I find that contract C0022637 for a short course entitled "Digital Marketing Strategy" was delivered over 15 hours commencing on 23 March 2020 and ending on 27 March 2020. Pages 348-9 of the Trial Bundle record that there were no cancelled hours, and that all 15 hours were paid for. Ms Pulit's pay slip for the payment period ending 31 March 2020 [pages 2239-2240] shows payment for those hours with cross reference to contract C0022637.

209. I find that this was also a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of this limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 27 March 2020.

210. I have addressed the question of what happened in the period between the termination of the contract to deliver the "Digital Marketing Strategy" course on 27 March 2020 and the commencement of the contract to deliver the "Creative Direction for Digital Media" course commencing on 14 April 2020. The answer is that there is no evidence of Ms Pulit having been employed by the First Respondent during that period.

211. I find that there is no evidence to indicate that this period could be said to have constituted a period when Ms Pulit was "absent from work on account of a temporary cessation of work" (as provided for by **Section 212(3)(b) of the Employment Rights Act 1996**). Nor, for completeness, do I find any evidence leading me to the view that Ms Pulit was "absent from work in circumstances such that, by arrangement or custom, she is regarded as continuing in the employment of her employer for any purpose" (as provided for by **Section 212(3)(c) of the Employment Rights Act 1996**).

212. On the basis of this evidence before me I find that the period between 27 March 2020 and 14 April 2020 included weeks which do not count in computing time as provided for in **Section 212 of the Employment Rights Act 1996**. In making this

finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this period does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the period between 27 March 2020 and 14 April 2020 breaks continuity of employment. I further find that, looking historically back over the academic year 2019/2020, there were also breaks in continuity between 5 December 2019 and 13 January 2020 (namely, the effective date of termination for contract C00197776 and commencement of contract C0019962); between 19 September 2019 and 2 October 2019 (namely, the effective date of termination for contract C0014730 and commencement of contract C0016438); and between 26 July 2019 and 29 August 2019 (namely, the effective date of termination for contract C0013385 and commencement of contract C0014730).

213. It therefore follows that Ms Pulit does not have sufficient continuous employment with the First Respondent to entitle her to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (by reference to **Section 135 of the Employment Rights Act 1996**).

214. In summary, therefore, I find that Ms Pulit was employed by the First Respondent to deliver short course non-award-bearing contracts. She was also employed on a completely separate arrangement to deliver courses for the Second Respondent.

215. Ms Pulit has given evidence concerning the arrangements for her employment, including some indication of the extent of direction given by the First Respondent, the degree of autonomy left to her by reason of her professional skill-set, the administrative framework within which her courses were delivered, and the way in which matters such as pay, pension, sickness and holiday were managed. Some documentary evidence in support of those latter matters has been produced in the form of pay slips recording pay, holiday, national insurance, and pension payments. On the basis of that evidence I find that during the time when she was delivering short course non-award-bearing contracts Ms Pulit was an "employee" of the First Respondent within the meaning of **Section 230(1) of the Employment Rights Act 1996**.

216. Ms Pulit was employed on a number of contracts to deliver short courses for the First Respondent. Many of these effectively provided some continuity of service as defined by the Employment Rights Act 1996. Sometimes Ms Pulit would deliver courses "in parallel" during the same time period.

217. Two of these contracts are particularly significant for the present proceedings. This is because, in relation to the Claimant's case that she was dismissed on 5 June 2020, I have found that there was no continuity of employment between the termination of the "Digital Marketing Strategy" course on 27 March 2020 and the commencement of the contract to deliver the "Creative Direction for Digital Media" course commencing on 14 April 2020.

218. It therefore follows that Ms Pulit does not have sufficient continuous employment with the First Respondent to entitle her to bring a claim either alleging unfair dismissal

(by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (by reference to **Section 135 of the Employment Rights Act 1996**).

Lead Claimant Mr Thomas Von Nordheim

219. Mr Von Nordheim is distinguishable from the other Lead Claimants in this case since his Claim Form ET1 was presented separately to the East London office of the Employment Tribunals and was received there on 18 January 2022 [pages 112-129]. His case was subsequently transferred to the Central London office of the Employment Tribunals on 5 May 2022 [pages 157-8]. He is also the only Claimant not covered by the corrected Judgment of Employment Judge Khan dismissing claims to redundancy payments on 2 June 2023 [page 166].

220. I find that Mr Von Nordheim, who describes himself as a self-employed haute couture tailor and tutor, commenced working for the London College of Fashion (then Artscom) in 2004. Historical documentation relating to his engagement is included with the Trial Bundle at pages 648-661 and subsequently.

221. Records of various engagements entered into by Mr Von Nordheim can be seen at pages 2539, 3144, and in the schedule drawn up by Mr Von Nordheim at pages 3188-3193. Meanwhile tax documents together with pay slips can be found at pages 2287-2376.

222. In addition to teaching non-award-bearing short courses for the First Respondent, Mr Von Nordheim has taught and teaches on award-bearing courses for the Second Respondent – including on the BA (Hons) course (Costume for performance tutorials).

223. His pay slips show that he was paid in respect of a short course (C0023206) entitled "Couture Tailoring" [pages 613-4] in the payment period ending 31 March 2020 [page 2367]. That course was scheduled to be delivered over 30 hours between 23-27 March 2020.

224. The pay slip also records a "Short Course Agreed Fee" in the sum of £3,000. An account of the circumstances underlying that payment is set out at paragraph 20 of Mr Von Nordheim's witness statement, which was not challenged. Prior to this he had undertaken short course delivery over 30 hours in 2019 under contract C0008432 [page 2366].

225. There is an account in Mr Von Nordheim's witness statement of events at the end of 2019 when what was described as a "partial redundancy" was contemplated between the Claimant and the Second Respondent. This appears to have given rise to the eventual payment of £3,000 in March 2020.

226. It is common ground that while he was delivering teaching under his contracts for short courses through the First Respondent Mr Von Nordheim was an "employee" within the meaning of **Section 230(1) of the Employment Rights Act 1996**. I am satisfied from the contextual evidence produced on behalf of Mr Von Nordheim and included in the Trial Bundle that, having regard to the arrangements for his employment, the extent of direction given by the First Respondent, the administrative framework within which the courses were delivered, and the way in which matters such

as pay, pension, sickness and holiday were managed, that during the time when he was delivering short course non-award-bearing contracts Mr Von Nordheim was an "employee" of the First Respondent within the meaning of **Section 230(1) of the Employment Rights Act 1996**.

227. In so far as engagements with the First Respondent are concerned, there is no evidence of short course contracts following the cancellation (albeit giving rise to full payment) of Contract C0023206, "Couture Tailoring". Indeed, Mr Von Nordheim's own schedule of engagements at pages 3188-3193 describes:

2019-20	**£4,191.23**	**P60/UAL Short Courses Ltd**
£3000	part redundancy	
23.3 – 27.3.2020	Couture Tailoring (cancelled due to Covid-19)	
2020-21	**£3423.24**	**P60/University of the Arts**
Sep. 2020 – 29.1.2021	BA (Hons.) Costume for performance tutorials	
22-26.3.2021	Couture Tailoring (furlough)	
2021-22	**£313.02**	**P60/UAL Short Courses Ltd**
(payment for furloughed class previous tax year)		

228. I find that the most recent engagements entered into by Mr Von Nordheim and the First Respondent prior to presentation of the Claim Form ET1 on 18 January 2022 were (1) the "Couture Tailoring" course which ended on 27 March 2019 and (2) the "Couture Tailoring" course which was due to commence on 23 March 2020 but which was cancelled by reason of the Covid lockdown. There were no further short course contracts entered into after the cancellation of the March 2020 course.

229. On the basis of the evidence concerning the operation of the HPS system on-line portal (which was not challenged), I find that a bespoke version of the document included in the Trial Bundle at pages 172-174 ("UAL Short Courses Ltd Tutors/Online Statement of Terms and Conditions") was generated in relation to both the "Couture Tailoring" courses. I find that Mr Von Nordheim accepted those contracts and was accordingly included on the payroll.

230. For reasons already alluded to, I find on a balance of probabilities that Mr Von Nordheim must have been aware of the "Statement of Terms and Conditions" and that he accepted those.

231. Paragraph 20.1 of the "Statement of Terms and Conditions" provides that:

> The Contract will terminate automatically on the date of the final teaching session.

I find that the contract (C0008432) to teach a short course entitled "Couture Tailoring" was a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. I further find that the termination of this limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. The "effective date of dismissal" (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) was 29 March 2019.

232. Contract C0023206, "Couture Tailoring", eventually was never delivered by reason of the imposition of lockdown. I find that this contract had been due to commence on 23 March 2020 and to terminate on 27 March 2020. I find that when it

was entered into this was a "limited-term" contract as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996**. However, I find that the termination of the contract in the context of the Covid pandemic came about by way of a "dismissal" by the First Respondent within the meaning of **Section 95(1)(a) of the Employment Rights Act 1996**.

233. For reasons similar to those already explained in relation to Ms Vehbi, and given that Mr Von Nordheim had received his contract to teach, I find that the effective date of termination for the "Couture Tailoring" course contract was the originally envisaged termination date for the limited-term contract entered into through the HPS system – namely, 27 March 2020.

234. It follows from the unchallenged evidence before me that there was a period between 27 March 2019 and 23 March 2020 when Mr Von Nordheim was not employed by the First Respondent. I find that period included weeks which did not count towards the continuous employment of Mr Von Nordheim within **Section 212 of the Employment Rights Act 1996**. In making this finding I have had regard to the definition of "week" contained in **Section 235(1) of the Employment Rights Act 1996**. I find that this period does not fall within the circumstances set out in **Section 212 (3)** or within **Section 213 of the Employment Rights Act 1996**. That being the case, it follows from **Section 210(4) of the Employment Rights Act 1996** that the period between 27 March 2019 and 23 March 2020 breaks continuity of employment.

235. I therefore find that, notwithstanding the presumption contained in **Section 210(5) of the Employment Rights Act 1996**, there was no continuity of employment between the termination of the "Couture Tailoring" course which ended on 27 March 2019 and the intended date for commencement of the "Couture Tailoring" course – namely, 23 March 2020.

236. It therefore follows that Mr Von Nordheim does not have sufficient continuous employment with the First Respondent to entitle him to bring a claim either alleging unfair dismissal (by reference to **Section 94 of the Employment Rights Act 1996**) or claiming entitlement to a redundancy payment (**by reference to Section 135 of the Employment Rights Act 1996**).

DISCUSSION AND CONCLUSIONS ON THE ISSUES

The Employer

237. Dealing first with issue (b) which concerns who is the employer of the Lead Claimants in relation to their short course non-award-bearing teaching contracts, I find that all of the relevant evidence points in the direction of the employer being the First Respondent – UAL Short Courses Limited.

238. It is clear from the experience of the Lead Claimants since 2018, as described in their witness statements and further clarified during the course of cross-examination, that they all engaged with the First Respondent in relation to "future planning" of the programme of offerings to be drawn up and advertised to the public. Once a sufficient degree of certainty had been achieved in that planning process (commonly through

exchanges of email communications), offers were made to individual tutors by means of the on-line portal managing access to the HPS system. The documentation generated through that system spelled out the employer as being the First Respondent, and acceptance of the offer by way of the on-line system constituted agreement with the "Statement of Terms and Conditions" produced in conjunction with the "HPAS2" document which was attached as a schedule to those terms and conditions.

239. The First Respondent is clearly a separate legal entity from the Second Respondent – notwithstanding Ms Whitehead's submissions on the basis of establishing an "associated employer" relationship by reference to **Section 231 of the Employment Rights Act 1996** – as demonstrated by the relevant corporate documentation obtained from Companies House and included in the Trial Bundle (see, for example, page 1273 together with a number of supplementary documents served on behalf of the Lead Claimants during the course of this hearing).

240. The provision to the First Respondent of services through the Second Respondent in relation to matters such as processing of the payroll, generation of P60 documents, or the like does not serve to alter that position. Evidence has been received on behalf of the Respondents as to the nature of such services, how they are paid for, and how the respective accountancy operates. That evidence has not been challenged or displaced by contrary evidence.

241. It is noted that some of the Lead Claimants undertake both short course tutoring for the First Respondent and other forms of engagement with the Second Respondent. Examples have been seen in relation to the Study Abroad programme and in the context of teaching on degree-bearing courses run by the Second Respondent. As a matter of principle, it is not impossible for an employee or worker to have more than one contract of employment in a given period, and it was noted that the recent case of **United Taxis Ltd v. Comolly, [2023] EAT 93**, to which I was referred, limited itself to what was described as the problem of "dual employment" – namely, obligations to more than one party "in respect of the same work at the same time" (see at paragraph 48 of the judgment of HHJ Auerbach]. Whether any employment protection rights arise in relation to arrangements other than the short course provision for the First Respondent may be a matter for consideration elsewhere, but that is not a matter for the current hearing.

242. I therefore find that in relation to their short course non-award-bearing teaching contracts all of the Lead Claimants were employed by the First Respondent (UAL Short Courses Limited). Having regard to the terms and conditions on which those contracts were entered into, as explained above, the Lead Claimants were on each occasion employed on limited-term contracts falling within **Section 235(2A) and (2B)(a) of the Employment Rights Act 1996**.

Employment Status

243. This issue – issue (a) – has seen broad agreement between the parties. Both parties submit that the Lead Claimants were "employees" within the meaning of **Section 230(1) of the Employment Rights Act 1996** while undertaking performance of their contracts to deliver short courses. That sub-section provides that:

> 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.

and sub-section (2) goes on to provide that:

> In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

244. The jurisprudence in relation to **Section 230 of the Employment Rights Act 1996** – other than in situations where the "normal" analytical approach under the Common Law requires a different consideration in order to take account of the special characteristics of engagements in the employment field – has most recently been confirmed by Lord Clarke in **Autoklenz Ltd v. Belcher, [2011] I.C.R. 1157**, where he spelled out (at paragraph 18) the basic position as regards what constitutes a "contract of employment" for this purpose. Thus:

> As Smith LJ explained in the *Court of Appeal [2010] IRLR 70*, para 11, the classic description of a contract of employment (or a contract of service as it used to be called) is found in the judgment of MacKenna J in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497*, 515c:
>
> "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 ..."

245. It is common ground that the "indicators" of "employee" status – as developed up to and including the analysis of the House of Lords in **Carmichael and Another v. National Power Plc, [1999] UKHL 47** – are present here. The dispute between the parties lies in relation to "continuity of service", rather than as regards "employment status".

246. Having considered the evidence and in the light of submissions, therefore, I find that for the duration of each of those contracts to deliver short courses the Lead Claimants were "employees" of the First Respondent within the meaning of **Section 230(1) of the Employment Rights Act 1996**.

Continuity of Service

247. Turning then to issue (c) – do the Lead Claimants have "sufficient continuous service to enable them to bring claims of unfair dismissal having regard to ss 108, 210-214 of the ERA 1996" – my findings of fact in relation to each of the Lead Claimants have been set out above.

248. In relation to all six of the Lead Claimants I have found that they do not have sufficient continuous service because in each case there are periods which break continuity having regard to **Section 210(4), Section 212 and Section 235(1) of the Employment Rights At 1996**.

Time Limits/Jurisdiction Issues

249. In view of my findings in relation to the non-qualification of any of the Lead Claimants to present a claim alleging "Unfair Dismissal", the issues addressed here no longer determine matters outstanding. However, for completeness, I set out my findings in relation to issues (f) and (g).

250. So far as issue (f) is concerned – "Have the Claimants been dismissed within the meaning of s 95 of the ERA 1996?" – the answer in each case is "Yes", since, under normal circumstances, each of their engagements was for a "limited-term contract" as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996** and the termination of the limited-term contract constituted a "dismissal" within the meaning of **Section 95(1)(b) of the Employment Rights Act 1996**. This "normal" situation applied in the cases of Mr Romano, Ms Montero-Sabin, Ms Best and Ms Pulit.

251. In two cases (Ms Vehbi and Mr Von Nordheim) this "normal" situation was displaced in the context of the measures undertaken in the face of Covid lockdown and restrictive measures introduced by the Government in March 2020. It is common ground that the first covid lockdown was announced by the Prime Minister on 23 March 2020, that legislation putting lockdown into effect received Royal Assent on 25 March 2020, and that the relevant measures came into force on 26 March 2020.

252. Both Ms Vehbi and Mr Von Nordheim found themselves directly impacted by the events of March 2020, such that contracts into which they had already entered were not capable of delivery as originally envisaged. I have found that those contracts were limited-term" contracts as defined by **Section 235(2A)(b) and (2B)(a) of the Employment Rights Act 1996** when they were initially entered into. However, subsequently they were terminated at the instigation of the First Respondent, with the consequence that I have found that the termination of those contracts in the context of the Covid pandemic came about by way of a "dismissal" by the First Respondent within the meaning of **Section 95(1)(a) of the Employment Rights Act 1996**.

253. As regards issue (g) – "If so, what was (were) the Claimants' effective date(s) of termination?" – I have set out the effective date of termination (as defined by **Section 97(1)(c) of the Employment Rights Act 1996**) for each of the engagements described above.

254. For ease of reference I summarise the respective dates as follows:

Mr Romano: 18 March 2020, upon termination of the "User Interface (UI) and Visual Design Online" short course (contract C0023491);

Ms Montero-Sabin: 13 March 2020, upon termination of the "Modern Art History" short course (contract C0019744);

Ms Best: 1 March 2020, upon termination of the "Applied Surface Design using Adobe Illustrator and Photoshop" short course (contract C0019544);

Ms Vehbi: 27 March 2020, being the originally agreed termination date for the "3D Draping Module 1" short course (contract C0022911) which was discharged by the First Respondent making full payment in respect of that limited-term contract notwithstanding that the course was not eventually delivered by reason of the imposition of Covid lockdown measures;

Ms Pulit: 5 June 2020, upon termination of the "Digital Marketing Strategy" short course (contract C0025858). **Note:** This date is consistent with Ms Pulit's own case that she was dismissed on that date. Subsequent engagements demonstrate an additional effective termination date prior to presentation of the Claim Form ET1 of 9 September 2020 in relation to a "Multimedia Storytelling" short course (contract C0027752), together with ongoing engagements due to terminate after the date of presentation of the Claim Form ET1 (contracts CC0027930 and C0027938).

Mr Von Nordheim: 27 March 2020, being the originally agreed termination date for the "Couture Tailoring" short course (contract C0023206) which was not eventually delivered by reason of the imposition of Covid lockdown measures;

255. The remaining issues (h), (i) and (j) in relation to the time limit provided for in **Section 111(2) of the Employment Rights Act 1996** fall away in consequence of the finding that none of the Lead Claimants had sufficient qualifying service to entitle them to present a claim alleging "Unfair Dismissal".

Lay-off

256. Issues (k) and (l) relate to the originally pleaded case on behalf of the Lead Claimants that they had been subjected to "lay off" and/or "short time" working by reference to **Section 147 of the Employment Rights Act 1996**.

257. Although it was maintained at the outset of the hearing that those claims remained "live", since no judgment had yet been issued in relation to them and they had not formally been withdrawn, little has been addressed to me in the course of this hearing on the matter.

258. From the evidence which has been put before me (putting the Claimants' case at its highest) and for the avoidance of doubt I place on record that I find that none of the Lead Claimants can be said to fall within the circumstances described by **Section 147(1) or Section 147(2) of the Employment Rights Act 1996**. The analysis of the engagements which I have set out above shows a pattern of working under limited-term contracts for the First Respondent which did not give rise in the case of any of the Lead Claimants to a situation covered by Section 147. I have also found that each of the Lead Claimants was dismissed by the First Respondent (either by virtue of **Section 95(1)(a) or Section 95(1)(b) of the Employment Rights Act 1996**. That being the case **Section 151 of the Employment Rights Act 1996** precludes those Lead Claimants from any entitlement by reference to **Sections 147 and 148 of the Employment Rights Act 1996**.

259. It therefore follows, in the absence of any evidence to the contrary, that the answer to issue (k) – "Were the Claimants laid off within the meaning of ERA 1996, s 147 employed under a contract on terms and conditions such that their remuneration

under the contract depends on their being provided by the employer with work of the kind which they are employed to do, but were not entitled to any remuneration under that contract in respect of any week(s) because the employer did not provide work for them (ERA 1996, s 147(1))?" – must be answered in the negative. In the cases of Mr Romano, Ms Montero-Sabin, Ms Best and Ms Pulit their limited-term contracts to deliver short courses were discharged by performance and termination in accordance with the terms of those contracts. In the cases of Ms Vehbi and Mr Von Nordheim their contracts were terminated by the First Respondent and discharged by payment of the full contractual sums agreed, notwithstanding that delivery of the courses involved was not insisted upon from those two Lead Claimants.

260. The same goes for issue (l) – "Were the Claimants (or any of them) kept on short-time within the meaning of ERA 1996, s 147(2) in that they were by reason of a diminution in the work provided for them by the employer (being work of a kind which under their contract the Claimants were employed to do) paid less than half of their usual week's pay (as defined)?".

DISPOSAL

261. The judgment of the Tribunal is that:

(1) In relation to their short course non-award-bearing teaching contracts all of the Lead Claimants were employed by the First Respondent (UAL Short Courses Limited) on limited-term contracts falling within Section 235(2A) and (2B)(a) of the Employment Rights Act 1996.

(2) For the duration of each of those contracts the Lead Claimants were "employees" within the meaning of Section 230(1) of the Employment Rights Act 1996.

(3) In the case of four of the Lead Claimants (Mr Romano, Ms Montero-Sabin, Ms Best and Ms Pulit) upon completion of each of those limited-term contracts there was a "dismissal" within the meaning of Section 95(1)(b) of the Employment Rights Act 1996.

(4) In the case of the other two Lead Claimants (Ms Vehbi and Mr Von Nordheim) their contracts were brought to an end by discharge on the part of the First Respondent and there was a "dismissal" within the meaning of Section 95(1)(a) of the Employment Rights Act 1996.

(5) None of the Lead Claimants has sufficient continuous service to enable them to bring claims of unfair dismissal by reason of their employment on limited-term short course non-award-bearing teaching contracts.

(6) The claims of the Lead Claimants alleging unfair dismissal by reference to Section 94 of the Employment Rights Act 1996 are dismissed.

(7) Lead Claimant Mr Thomas Von Nordheim does not have sufficient continuous service to enable him to bring a claim for entitlement to a redundancy payment by reference to Section 135 of the Employment Rights Act 1996.

(8) The claim of Mr Thomas Von Nordheim for entitlement to a redundancy payment is dismissed. For the avoidance of doubt this covers both the Claimant's claim by reference to Section 135(1)(a) and/or any alternative claim by reference to Section 135(1)(b) of the Employment Rights Act 1996.

(9) To the extent that any of the other Lead Claimants seeks to maintain a claim alleging entitlement to a redundancy payment by reason of lay-off or short time working within the meaning of Section 135(1)(a) or (b) of the Employment Rights Act 1996 none of them has sufficient continuous service to enable them to bring that claim. Any such claim is dismissed.

Employment Judge Professor A C Neal

18/01/2024

Sent to the parties on:

18/01/2024

For the Tribunal:

ANNEX A

UAL Short Courses Ltd Tutors/Online
Statement of Terms and Conditions

1. **THE EMPLOYER**: UAL Short Courses Ltd. 272 High Holborn, London, WC1V 7EY

2. **THE EMPLOYEE**: As indicated overleaf

3. **Date of commencement**:
   3.1. Your employment commences in accordance with the schedule indicated on the HPAS2
   3.2. Continuous service will be determined in accordance with your statutory rights.
   3.3. This contract is subject to a sufficient number of students enrolling for the classes you are required to teach
4. **Duties**
   4.1. You are employed as a UAL Short Courses Tutor. Your duties will include teaching in accordance with the attached schedule (HPAS2), overleaf and in addition, associated preparation, including, if required, the booking of life models, assessment, marking of exams (if appropriate), provision of data and related course administration. You must complete the class register at the beginning of each session and let the UAL Short Courses Co-ordinator know of any change in participant members.
   4.2. You are required to work flexibly and efficiently, to maintain the highest professional standards.
   4.3. You are required to comply with any rules and regulations which UAL Short Courses may from time to time issue to ensure the efficient operation of its business and the welfare and interest of its customers and employees. In particular, your attention is drawn to the fact that a no smoking policy has been adopted in respect of all buildings, and you are required to comply fully with the requirements of this policy.
   4.4. You are required to be present before the time of commencement of teaching so that all teaching activity commences promptly.
5. **Hours of work**: You are employed in accordance with the attached Schedule.
6. **Place of work:** Your principal place of work will initially be as indicated overleaf. You may, however, be required to work at any premises at which UAL Short Courses provides services. Travel expenses to and from the place of work will not be reimbursed. Reasonable additional expenses will be reimbursed when incurred as a necessary part of your duties, subject to the Business Manager
7. **Holidays:**
   7.1. The holiday entitlement for a full-time Tutor post in each full leave year is 25 days in addition to statutory Bank Holidays and days when UAL Short Courses is closed in the interest of efficiency. Your entitlement to paid leave is calculated on an equivalent basis, proportionate to the part of the leave year you are required to work. The leave year will commence on 1st August each year.
   7.2. Payment in respect of leave will be in accordance with clause 8.2 below.
8. **Salary**
   8.1. You will be paid in accordance with the rate indicated overleaf. This rate includes payment of your other related duties performed outside timetabled attendance e.g. preparation, marking if appropriate, etc.
   8.2. In addition, in respect of your period of annual leave, you will receive holiday pay for each hour of teaching delivered. Holiday pay accounts for 17.62% of the hourly rate shown overleaf.
   8.3. The pay under clauses 1 and 2 will be paid as a monthly salary in arrears by direct credit transfer.
9. **Deductions:** For the purposes of the Wages Act 1986, you hereby authorise UAL Short Courses to deduct from your salary any sums due from you to UAL Short Courses, including any overpayment, loans or advances made to you by UAL Short Courses. Recovery of overpayments will only be actioned following consultation on the rate of deduction.
10. **Cancellation of Classes**
    10.1. Should it be necessary to suspend or cancel a class for reasons beyond the control of the company or the employee, UAL Short Courses shall, wherever possible, give you advance notice of any such suspension or cancellation. In consultation with you UAL Short Courses will normally expect to find a suitable alternative date or time for the class(es) concerned. Normally under such circumstances no additional payment will be made for the rearranged class. However in exceptional circumstances (e.g. cancellation without notice, health and safety hazards, fire, etc.) an additional payment may be authorised by the Business Manager.
11. **Absence and Sickness**
    11.1. If you are unable to teach a class for any reason, you should notify your UAL Short Courses Course Co-ordinator as soon as is reasonable practicable. In consultation with you UAL Short Courses will normally expect to find a suitable alternative date and/or time for the class(es) concerned.
    11.2 If the class(es) are not re-arranged and you have had a minimum of 120 hours paid service during either of the current or one of the two previous academic years, you are eligible for sick pay in accordance with the University's sick pay scheme pay scheme for hourly paid staff. You may also be eligible for Statutory Sick Pay (SSP).
    11.3. The payment of sick pay is subject to your compliance with the University 's rules for the notification and verification of sickness absence, which are set out in the Employment Handbook.
    11.4 The University reserves the right to require you to be examined at any time by its Occupational Physician or an independent doctor at its expense and to cease payment of sick pay if it is advised that you are fit to return to work. In the event that you are required to undergo such a medical referral, you hereby explicitly consent to the University disclosing to the doctor who will examine you relevant information about your medical condition, insofar as it is necessary to enable the doctor to carry out a proper examination.
12. **Maternity Leave and Pay:** If you become pregnant, you may be eligible for Maternity Leave and Pay. The details and the procedures with which you must comply in order to exercise your rights are available from H' Resources.

13. **Work Outside the College:** Any employment with another employer should not interfere or conflict with your contractual duties for UAL Short Courses.

14. **Copyright**

14.1. The copyright in course descriptions produced by you for the purposes of the marketing and promotion of this UAL Short Courses course shall belong to UAL Short Courses unless otherwise agreed. Copyright in the report of any consultancy or research contract funded or supported by UAL Short Courses is the property of UAL Short Courses unless otherwise agreed.

14.2. The copyright in course materials produced by you for the purposes of the curriculum of this UAL Short Courses course shall belong to you. The copyright in scholarly work to further your academic career, and of teaching aids produced for your personal use and reference shall belong to you. All know-how, including but not limited to information, experience, methods, and techniques, which you have generated, are generating, or will generate outside of your employment with UAL Short Courses shall vest in and remain with you absolutely.

14.3. You must comply with arrangements for the copying of any materials or software, which are not copyright of UAL Short Courses.

15. **Pensions:** The Company is a member of the Local Government Pension Scheme (LGPS) and subject to its terms and conditions from time to time in force. You will automatically become a member of the LGPS, and pension contribution deductions will be made from your salary. You have the right to Opt-Out if you do not wish to remain in the scheme. In order to do this you must complete an electronic Opt-Out form which is available from the LPFA website. Even if you have previously opted out you may still be automatically enrolled at the employers re-enrolment date. This occurs approximately every three years. Further details of the LGPS may be found at http://www.yourpension.org.uk/LPFA/In-The-Scheme.aspx.

16. **Grievance:** If you have a grievance relating to any aspect of your employment, you should first discuss it with you line manager. Further details are available on the Human Resources website.

17. **Discipline:** UAL Short Courses expects reasonable standards of performance and conduct from its employees. Details of the disciplinary procedure are available from your Business Unit, Human Resources website. Your first point of contact for any issue relating to the procedure will normally be your Business Manager.

18. **Criminal Convictions:** You warrant as follows:

18.1. That you have disclosed any previous criminal convictions that you may have and which are not spent within the meaning of Section 1 of the Rehabilitation of Offenders ACT 1974 save where the teaching, supervising or training of persons aged under 18 is involved, where any previous convictions must be disclosed.

18.2. That you will disclose immediately upon conviction, the fact that you have been convicted of any criminal offence during the period of your employment.

18.3. In the event that you fail to disclose any convictions in accordance with paragraphs 18.1 and 18.2 above, such failure to disclose may be deemed to invalidate your contract and lead to immediate cessation of your employment.

18.4. Tutors must adhere to the agreed Child Protection Policy available form the short course manager.

19. **Health and Safety**

19.1. The Health and Safety at Work Act 1974 places a duty on all employees while at work to take reasonable care of themselves and of anyone who may be affected by their acts and omissions. Employees also have a duty to cooperate with UAL Short Courses in order to comply with its own duties under the Act and associated legislation.

19.2. The completed register, staff and student evaluation forms must be returned to the UAL Short Courses office at the end of your contract. The Health and Safety Risk assessment form for each course must be completed before the start of the course. The Health and Safety Declaration Form must be returned to the UAL Short Courses office after the first day of course. Failure to do so will result in payment not being authorised.

19.3.

19.3.1. safe systems of work are taught;

19.3.2. sufficient information, instruction and training is given to students to enable them to work safely;

19.3.3. plant, equipment and substances are used in a manner which will not adversely affect their health and safety and that of other students or staff.

20. **Re-engagement, Termination and Redundancy**

20.1 The Contract will terminate automatically on the date of the final teaching session. It may, however, be terminated earlier in the following circumstances:

20.1.1 You may terminate the Contract at any time by giving UAL Short Courses 1 month written notice.

20.1.2 UAL Short Courses may terminate the Contract at any time by giving you a minimum of two weeks written notice; or in accordance with statutory provisions if continuous service is greater than 2 years.

20.1.3 UAL Short Courses may terminate the Contract without notice if you are found guilty of gross misconduct.

21. **Duty Manager:** You may be required to act as a Duty Manager for a particular site.

22. **Data Protection 2018**

22.1 You shall at all times during your employment with the University of the Arts London ("The University") and/or its Subsidiaries act in accordance with the Data Protection Laws.

22.2 You agree to provide the University in its capacity as Controller with all Personal Data relating to you which is necessary or reasonably required for the proper performance of this agreement and in connection with your employment with

the University. This includes the performance of the University's responsibilities as your employer (e.g. the provision of your benefits package and/or pension scheme and maintaining records of attendance, health, discipline and grievances), the administration of the employment relationship (both during and after the employment); the conduct of UAL's functions and/or where such provision is required by law (the "**Authorised Purposes**").

22.3 You agree to inform the University's HR and payroll departments promptly of any change in your personal circumstances which will require the University to update its records.

22.4 In order to keep and maintain accurate records relating to your employment, it will be necessary for the University to record, hold and process Personal Data (including Sensitive Personal Data), relating to you held in manual and electronic form which is subject to the Data Protection Laws.

22.5 The University may disclose your Personal Data to third parties where this is necessary or reasonably required to achieve one or more of the Authorised Purposes. Such third parties include without limitation:

22.5.1 third party service providers, including payroll, benefits, rewards, occupational health, IT service providers and pension providers;

22.5.2 insurance providers;

22.5.3 professional advisors for the University

22.5.4 HM Revenue and Customs or other authorities

22.6 A full table of how and why the University shares your data can be found via the University's Employee Self Service portal:

22.7 The University does not transfer any personal information outside the EEA

22.8 Where it is necessary or reasonably required to achieve one or more of the Authorised Purposes, the University may process your Personal Data, including Sensitive Personal Data (including without limitation any self-certification forms or medical certificates supplied to the University to explain your absence by reason of illness or injury, any records of sickness absence, any medical reports or health assessments, any details of any disabilities, any details of your trade union membership, any information relating to your gender, religious or other beliefs, race or ethnic origin and any information relating to any criminal convictions or any criminal charges secured or brought against you).

22.9 Personal Data will also be used in an anonymous format to provide statistics and management information that will enable the University to monitor the effectiveness of its policies and procedures. The University is also required to supply data to external bodies such as the Higher Education Statistical Agency (HESA) in an anonymous format, i.e. without disclosing your identity.

22.10 You must ensure that you are fully aware of the University's policies and any mandatory training required by the University relating to data protection, including the University's:

22.10.1 Link to the Data Protection Policy (as amended from time to time)

22.11 and you agree that you shall comply with the above policies and/or training and any other policy and/or training introduced by the University from time to time to comply with the Data Protection Laws.

23. **Acceptance:**

Your response via email to accept the schedule of work also signifies your acceptance of the above terms.