



Neutral Citation Number: [2025] EWHC 2254 (KB)

Case No: KB-2024-002281

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03 September 2025

Before:

HHJ Howells
(Sitting as a Judge of the High Court)

Between:

(1) EQUITY
(2) LYNDA HAY
(Known professionally as LYNDA ROOKE)
(3) JACKIE CLUNE
(4) NICHOLAS SIMONS
(Known professionally as NICK FLETCHER)
(5) DAVID WILLIAMS
(Known professionally as DAVID JOHN)
(6) JASSA AHLUWALIA (7) HYWEL MORGAN
(8) NATALIE BIGGS
(Known professionally as NATALIE AMBER)
(9) TONIA CAMPBELL
(Known professionally as TONIA DALEY-
CAMPBELL)

Claimants

- and -

TALENT SYSTEMS EUROPE LIMITED
(Trading as SPOTLIGHT)

Defendant

Rebecca Tuck KC and Matt Jackson (instructed by **Pattinson & Brewer**) for the **Claimants**
Jane Mulcahy KC and Kendrah Potts (instructed by Wiggin LLP) for the **Defendant**

Hearing date: 16th July 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 03 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ Howells:

1. The Defendant in this matter, Spotlight, describes itself as “a UK company based in the UK who is part of Talent Systems and a trading name of Talent Systems Europe Limited”. Spotlight has, since 1927, produced a directory in which performers could pay to publish information about themselves in a manner accessible to casting professionals (the “Directory”). The Directory contained profiles that would typically include a headshot and information provided by the performer. The Directory when it was in printed form, was then sent to casting directors. In 1997 Spotlight and the Directory, in a move with the times, transitioned to become a digital platform, paid for by subscriptions. The hard copy Directory was phased out completely in 2016. It now describes itself as a “Software as a Service” (“SaaS”) business, offering software services to performers, agents and casting professionals. Through their digital platform subscribers (performers) upload a profile, including information about their career, skills etc. The profile is then published by Spotlight on their digital platform. Although Spotlight also provides some additional services, the evidence of its Managing Director Mr Hood in this matter states: *“The main function of Spotlight is to provide a platform that enables actors and other performers to publish their personal details and work history in order to advertise themselves in a published directory that is accessible by casting professionals”*.
2. The First Claimant, Equity, is a union representing the interests of up to 50,000 performers and creative practitioners. The Second to Ninth Claimants are members of Equity (and, in the cases of many, board members) who are all subscribers to the Defendant’s Directory. For that service they pay a subscription fee on either a monthly or annual basis.
3. This claim is brought, by Part 8 proceedings, to seek declarations, as set out in the Particulars of Claim. Essentially it is the Claimants’ position that the Defendant is operating as an Employment Agency, under the terms of section 13(2) of the Employment Agencies Act 1973 “the Act”) and that the controls in relation to an Employment Agency (particularly in relation to charging up-front fees) apply. As such the following declarations are sought:
 - A declaration that Spotlight is an Employment Agency as defined by section 13(2) of the Act.
 - A declaration that the fees charged by Spotlight must be no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker in the publication.
 - An order that Spotlight state how it assesses the reasonable estimate of the cost of production and circulation of the publication, attributable to the inclusion of information about each work seeker.
 - A declaration that any person who subscribes to Spotlight is entitled to have full access to the platform pursuant to Regulation 13(5) of the Conduct of Employment Agencies Employment Business (amendment) Regulations 2003 (the “Conduct Regulations”).

4. The Defendant very strongly contests this matter and contends that it is not, and never has been, an Employment Agency, and as such no declarations should be made. Further, even if the court is against it on that issue, other declarations are inappropriate pursuant to the relevant legislation and regulations. It is important therefore to set out the legislative and regulatory background to this case.
5. Legislation and Regulations: The definition of “employment agency” is found in section 13 of the Act (the interpretation section) which states that “employment agency” *“has the meaning assigned by subsection (2) of this section but does not include any arrangements, services, functions or business to which this Act does not apply by virtue of subsection (7) of this section”*;

Section 13(2) states : *“For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding employment with employers or of supplying employers with persons for employment by them”*.

Section 13(4) defines certain things which are excluded from this definition, including a newspaper or publication, unless it is published wholly or mainly for the purpose mentioned in section 13(2).

6. Pursuant to section 5 of the Act the Secretary of State may make regulations to secure the proper conduct of employment agencies and employment businesses and to protect the interests of persons availing themselves of their services. One such control measure on employment agencies is set out in section 6 which is a restriction on charging fees for finding employment:

“6 (1) Except in such cases or classes of case as the Secretary of State may prescribe—

- a. a person carrying on an employment agency shall not request or directly or indirectly receive any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment”*;

7. The consequences of non-compliance with this requirement are set out in section 6(2) of the Act. The person who contravenes this section shall be guilty of an offence and, upon conviction, face a fine.
8. Regulations have been put into place setting out the exceptions and when an employment agency may impose charges. Of particular relevance to this case are the Conduct Regulations.
9. There is no definition of an employment agency provided within the Conduct Regulations, save for referring back to the definition provided in the Act itself at section 13. Under Regulation 2 of the Conduct Regulations it states: *““agency” means an employment agency as defined in section 13(1) and (2) of the Act and includes a person carrying on an agency, and in the case of a person who carries on both an*

agency and an employment business means such a person in his capacity in carrying on the agency;”

10. Schedule 3 to the Conduct Regulations identifies certain types of occupation which are exempt from compliance with some, but not all of, the Conduct Regulations. Schedule 3 is entitled “Occupations in respect of which Employment Agencies may charge fees to work-seekers” and lists:

“Actor, musician, singer, dancer, background artist, extra, walk-on or other performer;

Composer, writer, artist, director, production manager, lighting cameraman, camera operator, make up artist, clothes, hair or make up stylist, film editor, action arranger or coordinator, stunt arranger, costume or production designer, recording engineer, property master, film continuity person, sound mixer, photographer, stage manager, producer, choreographer, theatre designer;

Photographic or fashion model; Professional sports person.”

It is agreed that those who subscribe to the Defendant’s Directory would fall within the category of Schedule 3 occupations.

11. Regulation 26 of the Conduct Regulations makes provision for circumstances in which fees are permitted to be charged to work-seekers, stating (Regulation 26(1)) that the restriction on charging fees to work seekers contained in section 6(1)(a) of the Act shall not apply *“in respect of a fee charged by an agency for the service provided by it of finding or seeking to find a work-seeker employment in any of the occupations listed in Schedule 3.*

Regulation 26(2) sets out the general rule by which, subject to Regulation 26(5), the fees charged should be out of the work-seeker’s earnings in any employment the agency has found for them. However, “up-front” fees (or fees not out of earnings) **may** be charged to Schedule 3 occupations if they fall within Regulation 26 (5)

“Paragraph (2) shall not apply to any fee charged to a work-seeker (who is not a work-seeker seeking employment as a photographic or fashion model) by an agency in respect of the inclusion of information about the work-seeker in a publication provided that—

- a. the publication is wholly for one or both of the following purposes, namely the purpose of finding work-seekers employment in, or providing hirers with information about, work-seekers in relation to, any of the occupations listed in Schedule 3 (other than photographic and fashion model) and*
- b. either-*
 - i. the only work-finding service provided by the agency or any person connected with it to the work-seeker is the service described in this paragraph; or*
 - ii. the fee charged to the work-seeker amounts to no more than a reasonable estimate of the cost of production and circulation of the publication*

attributable to the inclusion of information about that work-seeker in the publication; and

- c. in addition to the requirements in regulations 13...and 16, in so far as they are applicable, the agency has, before it entered into the contract with the work-seeker by reference to which the fee is to be charged, made available to him a copy of a current edition of the publication (or, where the publication exists only in electronic form, given him access to a current edition of the publication) in which it is offering to include information about him and;*
- d. (not relevant for this purpose)*

12. Work-finding services are also defined in Regulation 2.

“work-finding services” means

- a. services (whether by the provision of information or otherwise) provided—by an agency to a person for the purpose of finding that person employment or seeking to find that person employment;*
- b. by an employment business to an employee of the employment business for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person;*
- c. by an employment business to a person (the “first person”) for the purpose of finding or seeking to find another person (the “second person”), with a view to the first person becoming employed by the employment business and acting for and under the control of the second person;*

“work-seeker” means a person to whom an agency or employment business provides or holds itself out as being capable of providing work-finding services.

13. In short, therefore, an employment agency may charge upfront fees to a Schedule 3 work-seeker (as an exemption to the usual embargo) if it is for the inclusion of information about the work-seeker in a publication, such publication being wholly for finding work-seekers employment or providing hirers information about them, **and** this is the only work-finding service provided by the agency to the work-seeker **or** the fee charged was no more than a reasonable estimate of the cost of the publication. In addition, the agency should (before it entered into the contract) have made available to the work-seeker a current edition of the publication (or digital access if online).

14. The issues to be determined: Against that legislative and regulatory background the following issues require the court’s determination:

- a. Firstly, whether the Defendant is an “employment agency” within section 13(2) of the Act. The Claimant says the answer is in the affirmative. The Defendant says Spotlight is not and never has been an agency and as such the restrictions and regulations that apply to employment agencies do not apply to them.

If the answer is in the negative, the claim fails. If the answer to this is affirmative,

- b. Does the Defendant fall within Regulation 26(5)(b)(i), being an employment agency whose only work-finding service is that of providing the kind of publication referred to (i.e. the Directory)?
 - c. If not, are the fees charged by the Defendant no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker as provided for by Regulation 26(5)(b)(ii)?
 - d. Are the Claimants entitled to a declaration that subscribers to Spotlight's directory are entitled to have full access to the platform? (This question has been modified in submissions: now the Claimants say the right to access should apply to new or repeat subscribers, for a short period around the time they (re)subscribe and for a 7-day period.)
15. The approach to the written evidence: Because this case is brought procedurally under CPR Part 8, and the court's decision does not involve a substantial dispute of fact, the evidence in this case has all been on paper without any of the witnesses having been called to give oral evidence. Nevertheless, I have considered the evidence in its entirety, recognising that the factual background and context may be relevant in answering the questions above. I have also considered the videos provided which are demonstrations on how the platform works. Ultimately, what the parties and witnesses may have previously understood to be the legal position, and the stance they have previously taken to the central issues of whether the Defendant is an employment agency, is not necessarily central to the determination albeit it provides interesting context. As such, it is not necessary for this judgment to set out in full terms the written evidence. I will refer to parts which are relevant within my judgment. I confirm however, that the written evidence has been considered in its entirety.
16. The approach to statutory interpretation/construction: There is no substantial dispute between the parties as to the approach to be taken. The dispute is as to the end point and where such interpretation takes the court. In interpreting a statute, the court must look for the meaning which conveys the legislative intention. It is accepted that the "*text is the starting point*" and that "[t]he rules, principles, presumptions and canons which govern statutory interpretation are aids to construing the legislative text" (Bennion on Statutory Interpretation 8th Ed. ("Bennion") at 11.1).
17. The court ought not to look at reports of proceedings in the legislature to look for assistance as to the construction of an Act save for in limited circumstances (the 'exclusionary rule'). It is accepted that the rule in Pepper v Hart [1993] AC 593 permits such examination, notwithstanding the exclusionary rule, where, in the opinion of the court, that enactment is ambiguous or obscure or its literal meaning leads to an absurdity. In such circumstances the court may have regard to any statement on the Bill for the Act by a Minister or other promoter of the Bill, together with such other Parliamentary material as was necessary to understand such statement and its effect, and statements relied upon were clear. Further, the material ought only to be considered where it discloses the mischief aimed at or the parliamentary intention lying behind the ambiguous or obscure words.

18. The Defendant's position straightforwardly is that under the definition of Employment Agency in section 13 (2) of the Act (the only place where that term is defined) it is expressed as the business of providing services (whether by the provision of information or otherwise) for the purpose of finding persons employment with employers. The Defendant contends that a clear and unambiguous reading of this text is that there has to be provision of services by the business "for the purpose of finding persons employment". The Claimants' position is that the service of allowing the subscribers to upload their information to an online Directory is "for the purpose of finding persons employment".
19. The Claimants' position is that, in looking at the Act and Conduct Regulations, the court can and ought to consider what is recorded in Hansard. I have specifically been referred to the Debate in the House of Lords on 17th December 2007 on the Conduct Regulations. However, I remind myself that it is only appropriate to consider Hansard if it satisfies the strict conditions in Pepper v Hart. I further note that the Debate referred to in the House of Lords may not fall within the defined terms of Pepper v Hart. I do not know that the comments are made by a minister but for the purpose of this judgment I accept that the comments by Lord Bach would appear to be from a promoter of the Bill. I have not been told one way or the other. The Defendant contends (with some force in my judgment and a point which is not directly challenged by the Claimant) that a Debate in the House of Lords is not material that in itself falls within the Pepper v Hart exemption. However, insofar as it takes me anywhere on the statutory interpretation, I accept that within the Debate there was a discussion as to the intention to protect work-seekers from unscrupulous agencies charging high fees up-front for the promise of work. A cooling-off period of 7 days before such fees are taken was therefore intended to provide protection to work-seekers. Reference was made to "reputable publications which actors and models use to find work, which are "valued by those in the profession", and as such there was no intention to ban upfront fees outright. The debate indicates that Equity (the First Claimant) had been campaigning for a total ban on up-front fees. I note the above with interest as to context. This does not, however, greatly assist me in interpreting the text of the Act and the definitions within it, save for perhaps considering the context of the Bill.
20. The approach I take (as set out in Bennion Section 11.1) is to start with the text of the Act and Conduct Regulations. The legislative text must be read in context having regard to its purpose. It is assumed that Parliament is a rational, reasonable and informed legislature, pursuing a clear purpose. The rules, principles, presumptions and canons which govern statutory interpretation are aids to construing the legislative text. I am confirmed in that approach by what was said in the Supreme Court Judgment of Uber BV and others (Appellants) v Aslam and others (Respondents) [2021] UKSC 5 at paragraph 70 : "*The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose*".
21. The purpose of the Act would appear to be to provide protection to both agencies and work-seekers by regulation as to how such agencies should be conducted and the prohibition of charging upfront fees. This is clear from the fact that the enforcement power includes conviction on indictment or on a summary basis. In the former's case, there is no limit to the fine. There are also other administrative requirements placed

upon an Agency under the Act. In relation to the relevant provisions in the Regulation, the purpose is to ensure that work-seekers have a measure of protection in terms of paying up-front fees, to ensure that there is work which may be available (hence the 7-day cooling off period, and the opportunity to see the publication).

22. There are certain further presumptions to assist in statutory interpretation to ascertain the legislative intention. The court should have regard to the consequences of the construction, either way. If, on balance, the consequences of a particular construction are more likely to be adverse than beneficial, this is a factor telling against the construction. In the present case, the Defendant relies upon this presumption to contend that construing the Act to include the Defendant as falling within the definition of employment agency would have particularly negative consequences, in considering the potential risk of prosecutions and financial penalties that could arise.
23. Further, the interpreter of a statute should presume that the legislature intended common sense to be used in construing the enactment. The Defendant's pertinent submission on this point is that the legislature, as a matter of common sense, could not have intended the Act to catch Spotlight, providing an online directory service, within its ambit as that would also potentially catch many other similar providers, such as Yell (previously Yellow Pages) or other business models such as CheckaTrade and LinkedIn which allow users to place information about themselves and their skills/services on a platform which can be accessed by others who may want to engage their services. Such a wide interpretation, it is said, flies in the face of common sense and what would ordinarily be understood as an employment agency.
24. It appears that there is very limited case authority where the definition of an employment agency has been considered. The Claimants state in their skeleton argument that they are not aware of any cases which have engaged with Regulation 26 of the Conduct Regulations. The Claimants refer to, and invite the court to put considerable weight on, the Judicial Review decision of R (Simply Learning Tuition Agency Ltd v Secretary of State for Business, Energy and Industrial Strategy [2021] ICR 79. In that case the applicants were a number of tutor agencies. Their business model was the introduction of private tutors to those who wished to engage them (parents of children). The parents would sign up with the tutoring company, pay a fee, and be provided with details of suitable tutors. The tutoring agencies said that they were not an employment agency (as defined in section 13 of the Act); they were merely "tutor introduction services" albeit I note that they provided other collateral services including the collection and passing on of fees on behalf of the tutors. It was determined on the particular facts of that case that the tutoring companies fell within the definitions of employment agencies under the Act. However, in my judgment this authority has to be treated with some care. It is clear from the judgment that the central issue was whether, if the tutors were self-employed and not employees, they could fall within the definition under the Act of "*person for employment*". It is apparent that the main thrust of the dispute was as to the employment status of the tutor, and whether it made any difference. There was no consideration of what role the tutor company took, whether they were in effect "*providing services (whether by the provision of information or otherwise) for the purpose of finding employment with employers or of supplying employers with persons for employment by them*". In Simply Learning that issue was not in dispute (it was not factually challenged in that

case). The dispute which was determined was whether the terms of engagement of the tutors fell within the term “employment”. This in my judgment is a different issue (and a different factual scenario) from the present case. I refer specifically to paragraphs 53, 54 and 55 which highlight that this was the central issue for the court’s determination.

25. I further note, and concur, with what is stated at paragraph 58 of the judgment in Simply Learning: *“In short, where a business holds itself out as a “middleman” between a person who needs services and the person offering to supply them, the protective terms of the EAA and the regulatory requirements of the Conduct Regulations will usually apply to the “middleman” business, for the protection of work-seekers, hirers, and work-users”*. What is in dispute, on the facts of this case, is whether in fact the Defendant was holding itself out as a “middleman” at all.
26. Consideration of the evidence: Having fully considered the written evidence in this matter the following points are of particular relevance to my determination of this matter.
27. The sole witness on behalf of the Claimants is Ms Lynda Hay. She has been the President of Equity since July 2022. Her knowledge of the Defendant and its business model is therefore from the performer side (there is no suggestion that she has any inside knowledge of its business). She describes the services offered by Spotlight, including the *“very long-standing casting platform, which contains performers’ professional profiles which is used by casting directors, directors and producers to make contact with the performers or their agents...with a view to engaging them”*. She describes other services offered by the Defendant, including a “member assist program”, access to studios, group career advice and development events known as Open House events. She states: *“Spotlight is the dominant platform for performers to display their professional CV and contact details and for casting directors wanting to engage performers. It is considered essential for anyone who wants to work in the industry to be a member”* and *“The sole reason I pay to be on the Spotlight platform is to be available to those casting through the platform to secure employment with them or to look for work”*.
28. In her second statement Ms Hay sought to challenge some of the evidence of Mr Hood (the Defendant’s primary witness). She contended that Spotlight’s model was very different from bodies such as Checkatrade, LinkedIn or Yellow Pages mentioning its dominant position in the industry: Spotlight having stated that 99% of casting was done through its platform (Spotlight sought later to modify that assertion). She seeks to distinguish those other platforms further by stating that Spotlight requires performers registering to meet certain criteria and a key function of Spotlight is to match those wanting to cast artists with the artists. This is through the search function on the platform, *“enabling casting directors to conduct searches for performers that match criteria bases on information collected by Spotlight for performers”* and *“Furthermore, it sends out tailored emails to artists about specific jobs”*. I note certain emails Ms Hay has exhibited which are sent to her by Spotlight informing her of a number of castings which have been posted, one which appears to meet the description of Ms Hay in terms of age and gender, one for a musician (any gender, any playing age): it would be difficult to read into those examples that there had been any careful vetting or tailoring involved as opposed to this simply being a rather generic email.

29. Ms Hay asserts that the service of Spotlight enabling performers to find an agent is an example of work-finding service by the provision of information for the purpose of finding subscribers employment. She found her first agent through Spotlight (I am assuming, given her long career, this was a number of years ago). She accepts that some of Spotlight's services are not work-finding but workshops, "one to ones" and panel discussions are *"all designed to improve subscribers' chances of getting work."*
30. In terms of the history between Equity and Spotlight, she is unable to comment on evidence (below) as to the previous views of Equity as to the status of Spotlight as an employment agency. She refers to "rogue agencies" being the focus of Equity's gaze in 2003 when the Conduct Regulations were being considered (a point which I do not really understand: the definition of an agency has not changed over the years). What has changed is the legal ownership of Spotlight, a point Ms Hay addresses in describing Spotlight as "now a different and far more opaque company in a technologically different age". She refers to the owning company Talent Systems as being *"owned by a US based company which is seeking to dominate casting auditioning and crew hiring in the entertainment industry worldwide."* In a very frank comment, indicating perhaps the stance of Equity and the reasoning behind its alleged change of position towards Spotlight she states: *"What I and Equity are fundamentally seeking in this litigation, is to ensure that members are charged no more than the reasonable costs of their inclusion, rather than being at the mercy of this dominant company who can charge whatever they please."*
31. Insofar as Ms Hay refers to private (non-publicly available) emails I do not consider that this is evidence of any weight for the issues I need to determine.
32. The Defendant relies upon the witness evidence of Mr Matthew Hood, the Managing Director of the Defendant. He was previously employed by Equity for 17 years, most recently in the role of Deputy General Secretary up until 2021. Up until this litigation Equity and Spotlight had a successful working relationship for approximately 100 years. It is only recently that Equity has changed its stance in terms of whether Spotlight is subject to the relevant legislation. He explained the historical background and stated that Spotlight was not established to find work for performers: *"The main function of Spotlight is to provide a platform that enables actors and other performers to publish their personal details and work history in order to advertise themselves in a published directory that is accessible by casting professionals."*
33. As Spotlight evolved from a print only Directory onto a digital platform it did so through a "Software as a Service" (SaaS) business which, Mr Hood states: *"provides a software platform for subscribers to upload information about their career, skills and so on. Spotlight then publishes the collective information...uploaded on its platform"*. Mr Hood states that the core service provided by Spotlight to its subscribers (over 94,000 at the date of his statement and increasing) is *"to provide a platform that enables actors and other performers to publish their personal details and work history in order to advertise themselves in a published directory that is accessible by casting professionals. Spotlight's business model is solely focused on the provision of this online directory platform and generates revenue from the subscriptions from performers who wish to use it and publish information about themselves. Revenue is also generated by casting subscribers and the provision of physical casting space hire ... Whilst the platform has developed over time (largely as a result of technological developments), most notably moving from a printed*

publication to an online one, the core function and purpose of Spotlight has remained the same since its inception.”

34. Key points that I take from Mr Hood’s evidence are that casting directors, entertainment agencies and managers use the Directory as a resource and to publicise castings. Other than an initial message to make contact however, any discussions between performers and agents/casting directors all take place outside of the Directory, and Spotlight plays no role in those discussions. Spotlight does not vet profiles. It is the decision of the subscriber what information they place within the Directory. There is a search function, with specified search terms, by reference to skills and attributes which agents/directors etc can use to narrow down their search for performers. The performers themselves choose what skills and attributes to include in their entry. The search criteria are largely user-driven in that Spotlight adds search functions where they are requested by users. Performers also have an ability to upload show-reels onto their profile (a technological advance from the photographic headshots included in the hardcopy paper Directory). The content of these reels is entirely up to the performers, and Spotlight has no input into what they contain. Spotlight verifies that the relevant conditions of service are met and have a team that checks that profiles meet the mandatory publishing criteria (e.g. that images are suitable and no personal contact information is present).
35. The Defendant also provides several other services including access to studio space and events to assist the performers to develop their skills. There is also a function (“Talent Scout”) that helps performers who are unrepresented to find an agent, through a limited messaging system enabling the casting director to message the performer, but not vice versa.
36. Mr Hood stated that Spotlight have no commercial interest in any work that performers/subscribers undertake and have no knowledge of whether such work has been found. The Defendant has no knowledge of, and plays no part in, the negotiation of fees or terms of work undertaken, nor do Spotlight charge any fee or commission if an actor undertakes work. He compares the Directory platform to other job board platforms such as Checktrade, LinkedIn and previously Yellow Pages (which, as far as he is aware have never been considered to be Employment Agencies, something which would have “*far-reaching consequences*”).
37. In November 2020 the Defendant was privately acquired by Talent Systems LLC, a US based company which operates several SaaS platforms internationally (the business transferring in October 2022).
38. Mr Hood stated that Spotlight’s core business model has not changed since its inception: there has always been a subscription fee. The Terms and Conditions (for a number of years and certainly preceding this litigation) state that Spotlight is not an employment agency. The current annual subscription cost is £165 per year (or £15 per month), and subscription can be cancelled at any time. Although the cost of subscriptions has increased over the years, (38.5% over 14 years to 2024) that is less than inflation as measured by the consumer price index (47.1% over the same period). It is said that although the number of subscribers has increased over the years, that has been reflected by increased operating costs for maintaining the platform and hosting the data on servers. Third party costs and overheads have risen. For example, web hosting costs increased by approximately 40% in the period 2020-2024. Further

Spotlight offer discounts to performers who may have certain protected characteristics (deaf, disabled or neurodivergent) and offer fee waivers to performers unable to pay for economic reasons.

39. In terms of the regulatory position, Mr Hood's position is that the 2003 Regulations were enacted to prevent unscrupulous behaviour by work-finding businesses, who had been taking advantage of work-seekers. Government enforcement agencies such as the Employment Agency Standards (EAS) Inspectorate work closely to ensure compliance and bring prosecutions against those who do not comply with the Act and/or the Conduct Regulations. EAS have never taken any action against Spotlight, despite the fact that they have always operated the same business model. Whilst there have been investigations to assess whether Spotlight is impacted by the 1973 Act and the Conduct Regulations, at no stage has there been a finding that Spotlight is an employment agency, nor has EAS required it to cease or adapt its business model. Despite the presence of this enforcement agency, Mr Hood comments that, to the best of his knowledge, Equity has not sought to engage with EAS as a regulator to enforce or correct any alleged behaviour of Spotlight.
40. Mr Hood does not believe that the Spotlight platform is a work-finding service and nor are the additional benefits provided to subscribers. These include events, facilities and membership support programmes. On occasion the Defendant offers an "Open House event": a programme of workshops aimed at *"general career and skill development... These events do not help subscribers find work with particular casting directors or producers"*. Access to a studio, which can be booked by subscribers and non-subscribers for a fee *"does not help individuals find work..."*. "Boost" events (ticketed workshops for subscribers and non-subscribers) *"educate and train performers in all aspects of the ever-changing entertainment industry. This is all about upskilling and again does not involve helping individuals find work..."*. Further, Spotlight offers, for no charge, an ability to any member of the public to access Spotlight's contacts: this is effectively an industry address book. Again, it is said that this is not a work-finding service.
41. It is denied that the fee charged by Spotlight for a performer is an upfront fee: it is according to Mr Hood a subscription fee similar to that charged by many SaaS providers. It can be paid annually or monthly and cancelled at any time. Whilst Spotlight does host a job board where industry professionals can advertise their casting requirements to agents or performers directly, it does not get involved in any matching or obtaining work for its subscribers. Performer subscribers can opt to receive emails or information connected with any job postings by casting directors (and there are examples of those in the evidence).
42. The Defendant further relies on the evidence of Ms Kelly Wiffen, Head of Public Affairs at Spotlight since January 2024, a role which includes representing the Defendant to Parliament and lobbying on its behalf. Ms Wiffen was previously employed by Equity as their Research and Parliamentary Officer for 4 and a half years (between March 2001 and October 2005), reporting to the then General Secretary. In her statement she supports what is said by Mr Hood in relation to the business model of Spotlight. She confirms that at no stage has Spotlight or its subscription costs been found to fall foul of the regulatory framework governing employment agencies, despite there having been a number of government body consultations and investigations in this area. Whilst working for Equity she attended a working group on

their behalf established by the Department of Trade and Industry to discuss the 2003 Regulations. Equity's focus had been on entertainment agents putting performers on their books and charging performers for this. The concern was with "rogue" agents "running scams by charging upfront fees". The government and Equity were keen to have regulation of this. She described the "book" above as fundamentally different from how Spotlight operate: an agency's book is used by the agency as a tool when getting their clients work with a particular producer; *"The Spotlight platform...is merely a directory which talent use to host and advertise their details. Spotlight doesn't use this information to find work for performers, it would have absolutely no interest in doing so as it does not represent the performers"*. Having taken advice from the then General Secretary of Equity on the Consultation for the 2003 Regulations she was directed to inform the Working Group meetings (as part of the DTI) that *"Equity considered that Spotlight operated outside the scope of the proposed 2003 Regulations, as it was not an employment agency"*. Equity was then satisfied that Spotlight *"was purely a Directory...it was accepted as a tool used by performers to directly market and advertise themselves to casting directors and was nothing more than this"*. Equity's stance had not changed after the Regulations were passed. As stated above, the views of the parties, previously or currently, as to the precise status of Spotlight under the Act are only relevant in terms of context, and in no way bind this court. Nevertheless, the fact that this position was also "swiftly accepted" by the Department of Trade and Industry (a government department who was responsible for the introduction of the Conduct Regulations) is of note.

43. The final witness for the Defendant is Ms Sahera Khan: she is an actor who is deaf and is a British Sign Language artist/actor. She has been a Spotlight subscriber since 2017 and is a member of Equity. She describes Spotlight as *"a well-known and reputable service that many performers use to publish their details and promote their services as actors/performers"*. She explains how she uses the Spotlight platform to publish details about herself including headshots, age, credits and skills. She updates her own information. It is not vetted or edited by Spotlight. The details *"allow casting directors to search for me via the Spotlight platform and determine whether I may be the right fit for their production."* Spotlight does not take any active steps to match her with any specific production or find her work. Spotlight does not recommend her services to casting directors or secure auditions. That would be something her agent would do. Spotlight does not seek to match her to roles or jobs based on her portfolio. Essentially Ms Khan confirms in practice what Mr Hood said was the Spotlight model.

Submissions and analysis

44. Is the Defendant an "employment agency" within the meaning of section 13(2) of the Act? The Claimants contend that the Directory platform operated by Spotlight is a service provided by the Defendant **"for the purposes of finding persons employment with employers"**. They rely upon the analysis of the judge in *Simply Learning*, and particularly the fact that they allege that Spotlight hold themselves out as a middleman. They are, it is said, in the very same position as the tutor agencies in that case, who it was held fell *within the definition of agency*. Quoting paragraph 58 of the judgment again *"where a business holds itself out as a "middleman" between a person who needs services and the person offering to supply them, the protective terms of the EAA and the*

regulatory requirements of the Conduct Regulations will usually apply to the “middleman” business, for the protection of work-seekers, hirers and work-users.”

45. The submissions continue that if one looks at the terms of the Conduct Regulations, there is explicit reference in Regulation 2 to “work-finding services” meaning “services (whether by the provision of information or otherwise provided a. by an agency to a person for the purpose of finding that person employment or seeking to find employment ...”). It is accepted that Spotlight do not become involved in the casting process, and do not act on behalf of the work-seekers in any negotiations in respect of work-seeking. However, it is contended that the way casting directors contact the performers through the platform (as evidenced by Ms Hay and Ms Khan) must fall within the ordinary understanding of a “work-finding service”. It matters not whether the work seeker was successful or not in finding employment. As such the Defendant’s position (that they do not vet any entry nor follow up to see if work is obtained) is said to be of no relevance. The Claimants contend that the Directory is wholly or mainly to provide information (the details of the performers) for the purpose of finding employment (whether such employment is found). If there is any ambiguity, the reference to Spotlight by the minister introducing changes in the House of Lords debate shows, it is said, that Spotlight are within the scope of the statutory framework.
46. The Defendant contends that the Directory is and always has been a platform to allow performers to advertise themselves, in effect a marketing tool, stating who they are and what their skills and attributes are. That is very different from the role of an agent. A key provision of section 32 of the Act is the phrase “finding persons employment.” The term “work-seekers” comes from the Conduct Regulations, not from the Act and it is the Act which contains the definition of what an employment agency is. I accept this submission, which in my judgment has considerable force.
47. Properly construed, the Defendant contends there is no ambiguity in the wording of the statute. As such, recognising that *Pepper v Hart* sets out a strict 3-part test, it is not right to look beyond the language of the Act itself. Starting with the text of the Act therefore, and the language used, it is said that Spotlight are not providing a service “for finding persons employment”. Simply asserting that they are, which is said to be Equity’s position, is not sufficient. I accept that Spotlight’s role (and that of the Directory) is clearly set out in the evidence above. I note that the witnesses, Ms Hay and Ms Khan assert that they have found work through the Directory. In my judgment, however, that does not help with an interpretation of the Act. The fact that something has happened does not mean that one can construe matters backwards and conclude that the purpose was to achieve that end. Further, an assertion by Ms Hay that “Spotlight’s *raison d’être* is assisting subscribers obtaining employment” is of no evidential weight in construction. Further, Ms Hay has no inside knowledge as to the Defendant’s *raison d’être*. In fact, the Defendant’s evidence indicates that she is not correct in this assertion.
48. The Defendant contends that a common-sense interpretation of the Act means that the Defendant would not fall within it: approaching the language of the Act, it was to cover what were true employment agencies, and intended to secure their proper conduct, protecting the interests of those who avail themselves of their services. Counsel’s submissions refer to an employment agency containing within it the notion of an agency as ordinarily understood. Whilst I accept that this was an attractive

submission, the Act itself does not define an employment agency in terms of agency under section 13(2).

49. I remind myself of the approach to interpretation set out in the Uber case and “*have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose*”.
50. Looking at the meaning of the text of the Act therefore, it does not, in my judgment, require “agency” as often considered in a legal context. It does, however, require services for the purpose of finding persons employment. I note that the wording contains the phrase “for the purpose”: Spotlight contend it is not part of the purpose of their service to find employment. That might happen. It might not. It is however a step (or more away from that) removed. It is only enabling a performer to promote themselves. I accept this analysis as a proper reflection of the Defendant’s role.
51. Much weight was placed by the Claimants on the fact that performers can find an agent through the platform, specifically through the “Talent Scout” facility, which is “designed to support self-representing performers to indicate they are seeking representation”. This is said within the Claimants’ skeleton argument to be “a service to enhance the ability of the work seeker to find employment”. In my judgment, this phraseology is a reflection of the role of the Directory as a whole. There may be an enhancement of an ability to find employment: I find that this is a marketing tool, as opposed to a service for the *purpose* of finding employment. As Claimants’ counsel herself described the Directory in submissions, it is a promotional tool, allowing subscribers exposure to potential hirers.
52. If, by analogy (and I accept that no analogy is perfect) a dating service allowed a person to upload a profile, and that led to a relationship and ultimately marriage, would it be said that the dating service was providing a service for the purpose of creating marriages? If an organisation such as Yell or Checkatrade allowed a plumber to advertise their services, and the plumber was then engaged by a homeowner wanting a new bathroom installed, following the Claimant’s argument that could potentially make Checkatrade etc fall within the definition of an employment agency. The same could be argued to apply to legal directories which list counsel and solicitors and their area of specialism. It could be argued that they have provided a service (by providing information about the plumber/lawyer) for the purpose of finding persons employment. What is the real difference between such a business model and that of the Defendant? In my judgment there is much force in the analogy and, particularly in the assertion that Spotlight do not provide their directory (service) for the purpose of finding persons employment. They host a Directory, which performers use as a marketing tool. It may, or it may not, lead to employment. However, that is not its purpose.
53. In my judgment the provision of the Directory is a number of steps away from a service for the purpose of finding persons employment. The ambit and role of Spotlight’s directory is narrow. There is no service provided by Spotlight to vet, amend, or improve a performer’s information and profile. That is entirely in the hands of the performer. There is no managing of money on behalf of the performer if employment is ultimately found (as there was in the Simply Learning case). Spotlight does not pass the performers’ profiles on, or make recommendations. They simply “host” the details on their platform for others to peruse and consider as appropriate. There is no acting as a “middleman” in that sense.

54. I accept the submission by the Defendant that Spotlight's business and purpose has not changed since it was conceived as a hard copy directory. The fact it is now online does not change its purpose. The fact that the Directory has a search function whereby casting directors and the like can search for a performer with a particular characteristic is, in my judgment, simply a more sophisticated search function than would have been contained in an index in a hard copy directory. That does not change the purpose of the Directory; it simply improves its functionality. I reject the Claimants' submission that the publication serves no other purpose than to permit work-seekers to find employment and provide employers with persons for employment by them. It is in my judgment a marketing tool to promote the identity and skill set of the performer. That is markedly different.
55. The fact that the Defendant, under its terms and conditions, appears to have amended matters to explicitly now state that it is "not an employment agency" (and there is a lack of clarity as to when that addition was made) matters not in my judgment. Simply asserting something does not make it so. Further, that lack of an assertion previously makes no difference. I do not find this to be an attractive or persuasive argument.
56. I have considered carefully whether I need to give consideration to what was said in the House of Lords debate on either the Bill or the Conduct Regulations. I accept this may be useful for context and the rationale behind the Bill. However, I am not sure that Debates in the Upper House before the Bill was in its final form and before the House of Commons assist in any event. I consider the wording of the Act to be clear and unambiguous, and, given the exclusionary rule, I do not consider it is appropriate to consider other such matters. Whilst I understand (and in fact it is agreed) that the rationale of the Act and Conduct Regulations were properly to regulate the employment agency industry, other external matters do not require consideration where the language of the Act (and its definition of employment agency) is, in my judgment clear. It has never been suggested that the Defendant was a "rogue agency" as discussed by the consultees to the Regulations in any event. If the purpose of the Act and Regulations was to control and regulate the industry to prevent such exploitation, and I were to "*have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose*" (*Per Uber*) I still would not interpret the language of the Act sufficiently widely to consider that the service provided by the Defendant falls within the definition of an employment agency.
57. Whilst this is a matter of statutory interpretation, I do note that none of the regulatory enforcement agencies have sought to take any action against the Defendant in respect of its business model and directory (which has itself remained unchanged). This is despite the fact that the Act has been in force for over five decades, and the Conduct Regulations for over two. Further, I note that (according to the evidence of Ms Wiffen) the view of senior management and decision makers at Equity was that the Act and Conduct Regulations did not apply to the Defendant. As previously stated, the views of others are not in any way determinative of this matter. However, in my judgment it reflects the commonly held view (prior to this litigation) that the Defendant was not, and never had been, an Employment Agency as defined by the Act. This, in my judgement, is supportive of my analysis that the language of the statute is clear and unambiguous.

58. I further note the potential consequences to the Defendant if it were declared to be an employment agency and (potentially) one that has not followed the Conduct Regulations: it may face prosecution and the risk of substantial financial penalties. This is not the position that has been taken by the Regulators: they have never brought such an action. However, the potential consequences to the Defendant would be significant. In my judgment, for legislation to have that effect, it should be very clear that a penalty may be inflicted. If it were necessary to have done so, I would have weighed up carefully the potential penalty impact and whether the language of the Act supports such an interpretation. I would strongly lean against such a finding. In any event, in my judgment, the ordinary language of the Act is clear.
59. For the reasons set out above, and recognising what I find to be the straightforward language of section 13(2) Act, in my judgment the Defendant does not fall within the definition of “employment agency”.
60. I do not consider there to be an ambiguity in this regard upon a proper analysis of the Act. However, if I am wrong as to that, if there is any ambiguity, I would resolve that in the Defendant’s favour. I take into consideration the potential legal penalties which the Defendant would be exposed to. Law should be just and fair. Equity have not, until recently, considered that Spotlight falls within the ambit of the Act. When consulted in 2002 for the Conduct Regulations Equity expressly adopted the position that Spotlight should not be considered as an agency. The Regulators have apparently taken the same position. Assuming that parliament intended to act reasonably in its making of the legislation, it is appropriate to give some weight to what the view of such important stakeholders as a reasonable interpretation of the statutory provision was.

Conclusions

61. Returning to the questions which I need to answer in this case *firstly whether the Defendant is an “employment agency” within s13(2) of the Employment Agencies Act 1973*, I find that it is not and never has been. The services it provides by way of the Directory and its platform provide an industry valued marketing and promotional tool for performers. It does not provide services for the purposes of finding persons employment with employers or of supplying employers with persons for employment by them.
62. As I have concluded that the Defendant is not an agency, the answer to the next two questions no longer requires an answer for the purpose of this judgment. Nevertheless, my judgment on them in brief is as follows: *Does the Defendant fall within Regulation 26(5)(b)(i), being an employment agency, whose only work-finding service is that of providing the kind of publication referred to?* As the Defendant is not an agency it cannot fall within the Conduct Regulations. In any event, the Claimants in submissions only dealt with the provision by the Defendant of “tailored” emails about possible jobs, access to studios and workshops and the provision of an agent -finding service (as opposed to the ten alleged services listed in the Claimants’ Response). Without providing in depth exploration and analysis of the evidence, I would have difficulty in accepting that any of these were “work-finding services” pursuant to the Conduct Regulations. The “tailored” emails did not appear to be particularly tailored and were sent out automatically. There was no human input. It was not a service separate from the platform in any event. The access to studios for recording was a service open to members of the public, at a cost, in the same way as one could hire a restaurant or

village hall. The workshops covered a number of discussions and panels covering matters from script analysis and techniques. It was a service to improve skills and wellbeing. The agent finding service was no more than the performers stating on their profile that they wished to find an agent, leaving it up to an agent to contact them. It did not amount to a work-finding service. In any event it was not a separate service as it was a feature of the Directory. Again, these services were a number of steps removed from what the Conduct Regulations were intended to cover. All such services contended for by the Claimants were services that merely enable an individual to improve their skills or marketability.

63. *Are the fees charged by the Defendant no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker as provided for by Regulation 26(5)(b)(ii)?* This question no longer requires an answer. However, again without too great an exploration of the evidence in what is now a hypothetical situation, I would have very real difficulty on the evidence in concluding that the fees charged by the Defendant were more than a reasonable estimate of costs. The Claimants assert that the costs have risen but so have their own subscriptions. The Defendant's evidence explains the costs involved in maintaining the data and their platform. In any event, the Claimants' position is that they do not seek a declaration at this stage that the current fees are no more than a reasonable estimate of costs. Instead, they seek a declaration that they must be no more than that. In my judgment this is no more than seeking a declaration of what the law is. That is not an appropriate declaration to make. The Claimants also seek an order that the Defendant state how it assesses the reasonable estimate of the costs. Despite considering carefully the submissions made, the basis for such a declaration remained unclear to me. It is probably unhelpful in this hypothetical situation to go further.
64. The final issue raised is the request for a declaration that any person who subscribes to Spotlight is entitled to have full access to the platform pursuant to Regulation 13(5) of the Conduct Regulations. This only applies if Spotlight are an agency, and I have found they are not.
65. For the reasons given above I therefore dismiss the claim.

HHJ Catherine Howells

(sitting as a Judge of the High Court)

