IN THE COURT OF APPEAL CIVIL DIVISION **CASE NO: CA-2025-002386**

ON APPEAL FROM THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

HER HONOUR JUDGE HOWELLS SITTING AS

A JUDGE OF THE HIGH COURT

BETWEEN:

EQUITY & OTHERS

Claimants/Appellants

- and -

TALENT SYSTEMS EUROPE LIMITED

(Trading as SPOTLIGHT)

Defendant/Respondent

RESPONDENT'S APPEAL SKELETON ARGUMENT

References to the Core Bundle are in the form [**CB Tab/Page**]

References to the Supplementary Bundle are in the form [**Supp Tab/Page**][1]

12 December 2025

[1] References to the bundles will be inserted once the bundles are agreed pursuant to paragraph 5.30 of the Court of Appeal (Civil Division) Guide 2025.

INTRODUCTION

1. Equity and eight individuals (the "**Appellants**") commenced a Part 8 claim against the Respondent ("**Spotlight**") seeking declarations concerning Spotlight's status under the Employment Agencies Act 1973 (the "**Act**") and its potential obligations under The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "**Regulations**").[2] The Appellants' claims were dismissed by HHJ Howells ("the **Judge**") sitting as a judge of the High Court in a judgment dated 3 September 2025 (the "**Judgment**")[3]. The Appellants' appeal is brought on the three grounds in §3(d) below.

2. Spotlight has, for nearly 100 years, produced a directory in which performers can publish information about themselves in a manner accessible to casting professionals (the "**Directory**"). As the Judge correctly concluded at [**61**] [**CB xx**], Spotlight does not provide services for the purpose of finding work for individuals; rather the Directory is a marketing tool that performers can use to advertise themselves. This explains why, despite the Regulations coming into force more than 20 years ago, no enforcement action has ever been taken against Spotlight and why, when consulted on the Regulations, Equity previously concurred that Spotlight was not an employment agency. Equity's claims and appeal are based on a flawed interpretation and/or application of the Act and Regulations. There were no errors in the Judgment, and the appeal should be dismissed.

3. This Skeleton Argument addresses the following matters:
    a. Factual background;
    b. Approach to appeals;
    c. Statutory framework;
    d. Grounds of appeal:[4]
        i. **Ground 1**: whether the Judge erred in her interpretation and/or application of s. 13(2) in determining that Spotlight does not fall within the definition of

[2] References in this Skeleton Argument to a 'section' or 's.' are to sections of the Act and references to a 'regulation' are to a provision in the Regulations.
[3] [**CB/ xx**]. References to paragraphs of the Judgment are in the form "at [**xx**]".
[4] Based on the issues set out at §§8-9 of the Appellants' Appeal Skeleton.

"employment agency". If the Appellants fail on this ground, the remaining issues are redundant.

ii. **Ground 2**: whether the Judge erred in her interpretation of "*work-finding services*" in Regulation 26(5)(b)(i) in finding that Spotlight's only work finding service is the Directory;

iii. **Ground 3**: "no evidence" in relation to the costs of production, i.e., challenging the Judge's comments about the reasonableness of the costs of Spotlight.

A. FACTUAL BACKGROUND

The Appellants[5]

4. The First Appellant is a union representing the interests of circa 50,000 performers. The Second to Ninth Appellants are "*members of Equity (and, in the cases of many, board members)*"; they are also subscribers to Spotlight.

Spotlight[6]

5. Since 1927, Spotlight has produced a casting directory, which, until 1997, was only printed in hard copy. The Directory contained profiles that would typically include a headshot and information provided by the performer. Performers paid a fee for their profile to be included in the Directory. The hard copy Directory was sent to casting directors to enable them to identify potential performers.

6. In 1997, Spotlight and the Directory transitioned to become a digital platform, paid for by subscriptions. The hard copy Directory was phased out completely in 2016. Spotlight now considers itself a "Software as a Service" ("**SaaS**") business, offering software services to performers, agents and casting professionals. Matthew Hood, Managing Director of Spotlight, explained that the SaaS model "*provides a software platform for*

[5] The facts in this section are set out at [**2**] [**CB xx**].
[6] Unless stated otherwise, the facts in this section are set out at [**1**] [**CB xx**].

subscribers to upload information about their career, skills and so on. Spotlight then publishes the collective information…uploaded on its platform".[7]

7. Mr Hood explained that Spotlight was not established to find work for performers. Rather: "*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*."[8]

Spotlight's services and subscription structure

8. The Judge summarised the nature of the Directory at [**34**] [**CB xx**] as follows:
"…*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*."

9. Significantly, the Judge further noted that:
    a. Spotlight has no input into the content of profiles but merely "*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)*" (at [**34**] [**CB xx**]).

[7] Judgment at [**33**] [**CB xx**].
[8] Judgment at [**32**] [**CB xx**].

b. "*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*" (at [**36**] [**CB xx**]).

10. Spotlight provides several other services (addressed at §§65-73 below). These include providing access to studio space at Spotlight's offices and hosting events to help performers to develop their skills. Spotlight also offers a function that helps unrepresented performers find an agent.

11. The Judge noted Mr Hood's evidence that Spotlight's core business model has not changed since its inception (at [**54**] [**CB xx**]). Further, its Terms and Conditions for a number of years have stated that it is not an employment agency. The Judgment summarised the fee/subscription structure at [**38**] [**CB xx**] as follows:

"*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*."

12. The Judge noted at [**43**] [**CB xx**] the evidence of Sahera Khan, a Deaf and British Sign Language artist/actor who is also a member of Equity, explaining that "*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". Ms Khan emphasised that it was agents who found work for performers and negotiated terms on their behalf.[9]

Equity's previous position on the legislation

13. Prior to this litigation, Equity and Spotlight had a successful working relationship and Equity was aligned with Spotlight's position that it was not an employment agency.[10] When the Conduct Regulations were being considered in 2003, "*the focus of Equity's gaze*" was not Spotlight, but "*rogue agencies*".[11]

14. This was consistent with the evidence of Mr Hood and Kelly Wiffen, now Head of Public Affairs at Spotlight but, from March 2001 to October 2005, Research and Parliamentary Officer for Equity. Ms Wiffen (who attended a working group with the Department of Trade and Industry ("**DTI**") on Equity's behalf) explained that Equity's concern with rogue agents[12] was with those charging upfront fees simply to put a performer on their books.[13] In respect of the consultation for the Regulations, Ms Wiffen was directed by the then General Secretary of Equity to inform the working group that "*Equity considered that Spotlight operated outside the scope of the proposed 2003 Regulations, as it was not an employment agency*".[14] This position was "*swiftly accepted*" by the DTI.[15]

15. Consistent with Equity's and the DTI's approach, the Judge noted at [**39**] [**CB xx**]:

[9] Khan 1 §§6 to 8 [**Supp xx**].
[10] Judgment at [**32**] [**CB xx**].
[11] Judgment at [**30**] [**CB xx**].
[12] The Appellants' own evidence accepted that this was Equity's concern in 2002 (Judgment at [**30**] [**CB xx**]).
[13] Judgment at [**42**] [**CB xx**]. An extract from an Equity members' magazine illustrated the point [**Supp xx**].
[14] Judgment at [**42, 60**] [**CB xx**].
[15] Judgment at [**42**] [**CB xx**].

"*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*."

16. However, after Spotlight was acquired by Talent Systems in 2020, Equity's position changed. The Judgment noted the evidence of the Second Appellant, which referred to the acquisition, and commented that "*Spotlight is now part of a different and far more opaque company*" and that the Appellants wanted to avoid members "*being at the mercy of this dominant company who can charge whatever they please*"[16]. Yet there was no evidence for this stance: in recent years Spotlight's subscription has increased only 7.8%.[17]

B. APPROACH TO APPEALS INVOLVING STATUTORY INTERPRETATION

17. The principles to be applied in appeals involving issues of statutory interpretation were recently set out by Nugee LJ in *Taxpayer v Revenue and Customs Commissioners* [2025] 1 WLR 3137. In summary:
    a. The meaning of an ordinary English word is a question of fact (at §70(1)).
    b. The proper construction of a statute is a question of law (at §70(2)).
    c. "…*whether facts as found fall one side or the other of a conceptual line drawn by the law is indeed a question of fact*" at §70(4). Such a question of fact is considered "*one of evaluation or assessment rather than of primary fact*" (at §78).

[16] Judgment at [**30**] [**CB xx**].
[17] This is despite increased operating costs and significant investment. Evidence was before the Judge that Spotlight invested heavily to improve its service, including £8.4 million in development costs for the platform in addition to ongoing development costs and the cost of an internal product and development team (Hood 1 §20 [**Supp xx**]).

18. As to when an appeal court will interfere with a lower court's application of a statute, Lord Radcliffe stated in *Edwards v Bairstow* [1956] AC 14 at §36 that, "*it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene*".

C. STATUTORY FRAMEWORK[18]

19. For the purpose of Ground 1, the relevant definition is found in s. 13(2), which provides (emphasis added) that an "'*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 persons employment with employers or of supplying employers with persons for employment by them*".

20. In respect of Grounds 2 and 3, the relevant provisions are primarily set out in Regulation 26 of the Regulations, which contains exemptions to the restriction in s. 6(1)[19] of the Act on the charging of fees to persons seeking employment.

21. Paragraph 1 of Regulation 26 provides: "*Subject to paragraphs (3) and (4), 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.*" It is not in dispute that the relevant work-seekers for the purposes of these proceedings fall within Schedule 3 (which includes artists) or that paragraphs (3) and (4) do not apply.

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[18] The statutory framework is set out in the Judgment at [**5-13**] [**CB xx**].

[19] Section 6(1)(a) of the Act provides *"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*".

22. Paragraph 2 provides that: "*Where paragraph (1) applies, subject to paragraph (5), any fee charged by the agency may consist only of a charge or commission payable out of the work-seeker's earnings in any such employment which the agency has found for him.*" The effect of this paragraph is that where (as would be the case here if Spotlight were found to be an employment agency) paragraph 1 applies, the agency may (i) charge work-seekers a charge or commission payable out of earnings from work the agency found for them (in line with paragraph 2); or (ii) charge a fee on the basis set out in paragraph 5.

23. Paragraph 5 provides in relevant part:

"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 or 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…".

24. "*Work-finding services*" is defined in Regulation 2 and "*means 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 that person employment*".

E SPOTLIGHT'S RESPONSE TO THE GROUNDS OF APPEAL

Ground 1: Whether the Judge erred in her interpretation or application of s. 13(2) in determining that Spotlight is not an employment agency

25. The Judge did not err in her interpretation or application of s. 13(2). Spotlight is not an employment agency as defined in s. 13(2) because it does not provide services for the purpose of finding persons employment with employers (or supply employers with employees). Spotlight neither provides its services for that purpose, nor does it in fact find work for performers; rather, it provides a marketing tool in the form of the Directory.

No error in the Judge's approach to statutory interpretation

26. The Judge correctly identified the authorities on, and approach to, statutory interpretation (and the Appellants do not suggest otherwise).[20] In particular, the Judge:
    a. Cited at [**20**] [**CB xx**] *Uber BV and others (Appellants) v Aslam and others* [2021] UKSC 5 at §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*";
    b. Referenced the following passages in Bennion on Statutory Interpretation: the "*text is the starting point*" and "*[t]he rules, principles, presumptions and canons which govern statutory interpretation are aids to construing the legislative text*";[21]
    c. Referred to the presumptions that the law should be fair and just and against absurdity, and to the principle against doubtful penalisation.[22]

No error in the Judge's interpretation of the language in s. 13(2)

27. There was no error in the Judge's approach to interpreting the language in s. 13(2). Nor is it understood that the Appellants assert that there was any such error.

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[20] Judgment at [**16-17, 20, 22, 23, 47, 49, 58 and 60**] [**CB xx**].
[21] Bennion on Statutory Interpretation 8th Ed. ("**Bennion**") at 11.1. Judgment at [**16**] [**CB xx**].
[22] Judgment at [**22, 23, 58, 60**] [**CB xx**].

28. Section 13(2) provides that an employment agency means "*the business… of providing services… for the purpose of finding persons employment with employers or supplying employers with persons for employment by them*". This was the language considered and applied by the Judge.[23]

29. The language in s. 13(2) is to be given its ordinary meaning. No argument has been advanced to the contrary. The Judge referred at [**59**] [**CB xx**] to "*what I find to be the straightforward language of section 13(2) Act*", which she correctly applied.

Correct and/or reasonable application of s. 13(2) by the Judge

30. The Judge correctly applied s. 13(2) in determining that Spotlight is not an employment agency. Certainly, her determination was within the bounds of reasonable judgment.

31. First, the central basis for the Judge's determination was the way in which the Directory operates and, consequently, the limited role played by Spotlight:

"*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*[24] *(as there was in the Simply Learning case). Spotlight does not pass the performers' profiles on, or make recommendations.*[25] *They simply "host" the details on*

[23] See, by way of example, the Judgment at [**50**] [**CB xx**].
[24] This was also consistent with the Judge's acceptance at [**36**] [**CB xx**] of Spotlight's evidence that it is not even informed whether performers who subscribe to the Spotlight platform obtain work.
[25] As the Judge found at [**28**] [**CB xx**], whilst performer subscribers receive emails informing them about castings that might match their profile, "*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*." The emails were set out in an exhibit to the Appellants' evidence [**Supp xx**].

their platform for others to peruse and consider as appropriate. There is no acting as a "middleman" in that sense."[26]

32. The reference to "*middleman*" is from *Simply Learning Tutor Agency Ltd v SS for Business, Energy and Industrial Strategy* [2021] ICR 79. That case concerned s.13(1) of the Act and raised different issues (as the Judge noted at [**24**] [**CB xx**]). However, the Judge accepted that it was relevant to consider whether Spotlight "*was holding itself out as a 'middleman' at all*" (at [**25**] [**CB xx**]): she concluded at [**53**] [**CB xx**] that given the narrow ambit and role of Spotlight, it did not.

33. Secondly, and consistent with the first point, it is the performers (or third parties acting on their behalf, such as their agents[27]) who use the Directory to advertise their services and may seek to use it to help to find work for themselves. As the Judge explained at [**51**] [**CB xx**]: "*[t]here 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 persons employment*." The Appellants seek by their proposed interpretation to extend the scope of s. 13(2) beyond its natural meaning to services that might facilitate an individual to find employment, whether by advertising their services or by assisting third parties (here, the agents) to find employment for them. But that is not how s. 13(2) is drafted: it does not state that it applies to services that could be used to help individuals to find employment for themselves. The Appellants' interpretation would offend legal certainty and the principle against doubtful penalisation (see further §§53-56 below).

34. Thirdly, the Judge noted how the Directory had developed and its original purpose as a hard copy casting directory, stating at [**54**] [**CB xx**] that: "*Spotlight's business and purpose has not changed since it was conceived as a hard copy directory. The fact it is*

[26] Judgment at [**53**] [**CB xx**].
[27] The fact the Directory operates as a repository for contact information and performers' CVs, and the role of agents, was evident even from the Appellants' own evidence: the Second Appellant stated, "*I check my Spotlight profile regularly and update my CV to refer to new work that I have done. However, I do not visit [Spotlight] for castings any more as many are very low paid, or my agent would know about them anyway… My agent insists that I am in Spotlight as a place where my contacts and CV can be stored and searched for*" Hay 1 §8 [**Supp xx**].

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."

35. Fourthly, the Judge considered the potential consequences of the Appellants' proposed construction to seek to avoid a construction that would be absurd[28] or produce adverse consequences.[29] This is an important consideration given that the consequences of an entity being an 'employment agency' are significant and onerous. The Judge noted at [**52**] [**CB xx**] that the interpretation contended for by the Appellants could result in online platforms such as Yell.com and Checkatrade, or even legal directories, falling within the definition of "employment agency". These platforms allow employers to post job openings and individuals to post information about themselves and their services; however, it cannot sensibly be suggested that the platforms are employment agencies.

36. The Appellants complain that these platforms were not party to the proceedings. However, the following pertinent evidence regarding Yell.com, Checkatrade and LinkedIn Premium, which was sufficient for the Judge to identify the potential difficulty with the Appellants' interpretation, was before the Judge:[30]
    a. All three platforms are SaaS businesses that charge subscribers for being listed and advertising their services on their platforms.[31]

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[28] Bennion 13.1: "*The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature. Here, the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.*"
[29] It is well-established that "[*t]he consequences of a construction are to be taken into account, as part of the process of interpretation" and "[i]f on balance the consequences of a particular construction are more likely to be adverse than beneficent this is a factor telling against that construction*" (Bennion 11.6).
[30] This was addressed in detail in Hood 2 §6 [**Supp xx**].
[31] LinkedIn charges subscribers for LinkedIn Premium, which offers additional features to "*help job seekers*" [**Supp xx**]. Similarly, Yell.com offers a paid-for service that includes the ability to post adverts to boost business [**Supp xx**].

b. Checkatrade and Yell both have specific criteria that subscribers must meet to advertise on the platforms.

c. As Mr Hood explained: "*While Checkatrade, Yell.com, and LinkedIn operate in a different sector, their primary purpose is to help users find subscribers who are capable of providing the services that they require and for subscribers to have a platform to advertise those services.*"

Appellants' complaints regarding the Judge's application of s. 13(2)

37. At §§21-25 of the Appeal Skeleton, the Appellants take issue with the Judge's application of s. 13(2) (albeit the Appellants do not describe their arguments as relevant to application, no doubt because of the degree of discretion afforded in respect of a judge's application of a statute). The Appellants' arguments are misconceived for the reasons below.

38. At Appeal Skeleton §23, the Appellants argue that a marketing tool to promote performers is "*the essential element of a service intended to help a person…find employment*". But this belies the error at the heart of the Appellants' case: s. 13(2) does not extend to services, such as the provision of a marketing tool, that might potentially be used by third parties to help them to find employment for themselves. There is a difference between that and a business *"providing services… for the purpose of finding*" employment to which s.13(2) might properly apply. Plainly, given that this case is concerned with the definition of "employment agency", it is the service of the relevant entity (here Spotlight) that must be for the purpose of finding employment. That is not Spotlight's role.

39. At Appeal Skeleton §24, the Appellants take issue with the Judge's finding at [**53**] [**CB xx**] that the Directory is "*a number of steps away from a service for the purpose of finding persons employment*". However, the Judge's reasoning for this conclusion is set out at [**53**] [**CB xx**], where she details the narrow ambit of Spotlight's role and therefore finds that Spotlight does not act as a "middleman". Her determination was plainly reasonable in the context of applying s. 13(2) to the facts of this case. Further, the Appellants' assertion in §24 that, "*[t]here is nothing either in section 13 EAA nor*

*regulation 26 of the Conduct Regulations which requires any more than the provision of informatio*n" is wrong. Leaving aside the fact that the relevant definition is in the Act, not the Regulations, even if the service is the provision of information, s. 13(2) requires that the service be provided "*for the purpose of finding persons employment*". It is that element that the Judge considered was not satisfied in this case.

40. The same flaw is repeated in §25 of the Appeal Skeleton. The Appellants are wrong to assert that "*[t]he service is the publication itself, and nowhere does HHJ Howells address why these additional steps are necessary*". In particular:
    a. A publication is not by itself sufficient to fall within s. 13(2): it must be "*for the purpose of finding persons employment*".
    b. The Judge's finding that there was "*no service provided by Spotlight to vet, amend, or improve a performer's information and profile*" is not irrelevant. This constituted part of her evaluative judgment and part of her reason for finding that the service provided by Spotlight was "*a number of steps away from a service for the purpose of finding persons employment*" (at [**53**] [**CB xx**]).
    c. Contrary to the Appellants' assertion in §25, the Judge also expressly addressed the purpose of Spotlight: she found that it is a "*marketing tool to promote the identity and skill set of the performer*" (at [**54**] [**CB xx**]).

41. At §26, the Appellants assert that the dating service analogy at [**52**] [**CB xx**] is "*wholly erroneous*", notwithstanding that there are clear parallels between the present case and the analogy. In any event, the Judge accepts that "*no analogy is perfect*" at [**52**] [**CB xx**] and her brief reference serves only to ask the hypothetical question whether a potential outcome of posting information is determinative of the purpose. Even if holes could be picked in the analogy, given the very limited reliance on it, it would not render the Judge's application of s. 13(2) wrong.

42. As to §§27 to 28 of the Appeal Skeleton and the Appellants' issues with the Judge's consideration of analogous platforms:

a. It is appropriate in interpreting a statute to have regard to the consequences of a particular construction (see footnote 29 above) and the Judge was entitled to consider how the Appellants' construction would apply to other online platforms.
b. The fact the platforms considered were not parties to the proceedings is irrelevant: Spotlight led evidence about relevant features of the platforms, which evidence was not disputed by the Appellants.
c. The Appellants' reliance on Schedule 3 of the Regulations is misplaced as "employment agency" is defined in s. 13(2) of the Act, not in the Regulations.
d. The Appellants' reference to performers taking up employment on Equity terms and conditions, in order to distinguish Spotlight from, for example, Checkatrade, is misleading: performers will typically be self-employed even if, when they take on roles, they do so on Equity's terms and conditions.

Alleged failure by the Judge to have any or proper regard to legislative intent

43. The Appellants assert that the Judge erred on the basis that "*she failed to have any or proper regard to legislative intent of the provision*". This is addressed at §§21 to 28 of the Appeal Skeleton, yet the basis for this complaint is entirely unclear. Rather, the arguments concern the Judge's application of s. 13(2) (addressed at §§37 to 42 above).

44. Significantly, the Appeal Skeleton fails to identify the legislative intent to which it is alleged the Judge failed to have regard. Even assuming the Appellants are using the purpose of the Act as interchangeable with "legislative intent", the Appellants' criticism is wrong:
    a. First, the Judge expressly recognised at [**16**] [**CB xx**] that in interpreting a statute she was to "*look for the meaning which conveys the legislative intention*".
    b. Secondly, she expressly considered the purpose of the Act,[32] noting, among other things, that it provides "*protection to both agencies and work-seekers by regulation as to how such agencies should be conducted and the prohibition of charging upfront fees".* The Appellants themselves aver that this was the purpose

[32] Judgment at [**21**] [**CB xx**].

of the Act (indeed the Appeal Skeleton at §20 cites this passage from the Judgment).

c. Thirdly, in analysing the parties' submissions and interpreting the Act, the Judge again reminded herself of the need to consider the purpose of the provision (at [**50**] [**CB xx**]).

45. It cannot be said that the Judge failed to look for the meaning that conveys the legislative intent or to consider the purpose of the Act.

46. In any event, the Appellants' reliance on legislative intent and/or purpose is misconceived. As set out above (and as the Judge found), Spotlight does not provide services typically associated with employment agencies (such as vetting individuals and matching candidates to roles or negotiating). Rather, it is the performers themselves (or third parties, such as agents, acting on a performer's behalf) who use the Directory to advertise the performers' services. In such circumstances, the protections afforded by the legislation are not necessary and the onerous obligations that would be imposed on Spotlight if it were found to be an employment agency are not justified.

Alleged failure by the Judge to have regard to the context of s. 13(2)

47. The Appellants' assertions that the Judge failed to have regard to "*the context of s13(2) within the section and statute as a whole*" or subsequent regulations under the Act (Appeal Skeleton §§29 to 33) are incorrect and/or their reliance on the relevant provision is flawed for the reasons below.

48. As to the assertion that the Judge erred in failing to have regard to "*the words of the statute which state that the provision of information is sufficient to satisfy the definition*":

a. First, this is not what the Act provides. The provision of information alone does not render an entity an employment agency. A service of providing information must be "*for the purpose of finding persons employment*".
b. Secondly, the Judge recognised that providing information could be a relevant service (at [**45, 52**][33]).

49. The Appellants argue that the Judge failed to have regard to the fact that it is not necessary for the service to result in employment. But this is wrong. The Judge referenced this submission by the Appellants at [**45**] [**CB xx**] and, at [**52**] [**CB xx**], considered other potential services by analogy and demonstrated her awareness of this point when noting that, "*It may, or it may not, lead to employment*".

50. Concerning the assertion the Judge failed to have "*any real regard to section 13(4)*":
a. The Judge referred to s. 13(4) at [**5**] [**CB xx**], noting that it defined certain exceptions to the definition in s. 13(2), "*including a newspaper or publication, unless it is published wholly or mainly for the purpose mention[ed] in section 13(2)*".
b. Even if the Judge did not have "*real regard*" to s.13(4), this would not render the decision wrong. This is because s.13(4) clarifies that a publication will not fall within s.13(2) unless published wholly or mainly for the purpose in s.13(2); s.13(4) therefore refers back to the purpose set out in s.13(2), which purpose the Judge considered. As set out above, the Judge in fact noted that s.13(4) referred back to the purpose in s. 13(2) at [**5**] [**CB xx**].

51. Similarly, the Appellants' reliance on Regulation 26 is misconceived: Regulation 26 simply makes provision for fees that can be charged for inclusion in a publication <u>if</u> an entity falls within the definition of an employment agency in s.13(2). The fact that Regulation 26 envisages that a publication may constitute a "*work-finding service*" takes matters no further. It is not in dispute that a publication could result in an entity being

[33] [**CB xx**]. At [**52**] the Judge considered the potential status of other services by analogy, including services "*by providing information*".

an employment agency if the publication were published for the purpose of finding work for individuals.

Other presumptions or principles of construction relied on by the Judge

52. The Judge concluded at [**58-60**] [**CB xx**] that the ordinary language of s. 13(2) is clear. However, had the language been ambiguous, she would have relied on the presumptions below in finding in favour of Spotlight.

The principle against doubtful penalisation

53. It is a well-established principle of legal policy that a person should not be penalised except under clear law.[34] In this case, a person who contravenes s. 6(1) by charging fees in a manner contrary to the Act may be guilty of a criminal offence and liable to a fine (see s. 6(2)[35]). The fact that it would not have been clear from the legislation, either to Spotlight or anyone reading the legislation objectively, that Spotlight falls within the definition of an employment agency is supported by the fact that no enforcement action has been taken against Spotlight since the legislation came into effect.[36] Further, evidence was before the Court that contemporaneous guidance produced by the DTI

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[34] Bennion 26.4. Dickenson v Fletcher (1873) LR 9 CP 1 *per* Brett J at [7]*:* "*Those who contend that a penalty may be inflicted must show that the words of the Act distinctly enact that it shall be incurred under the present circumstances. They must fail if the words are merely equally capable of a construction that would, and one that would not, inflict the penalty.*"

[35] Section 6(2) provides "*Any person who contravenes this section shall be guilty of an offence and liable…(a) on conviction on indictment, to a fine; (b) on summary conviction, to a fine not exceeding the statutory maximum*". An unlimited fine may be imposed following conviction on indictment. Further s. 11 provides: "*Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*"

[35] Bennion 10.6: "*Where the punishment is severe, great weight will be given to the principle against*
doubtful penalisation."

[36] Judgment at [**58**] [**CB xx**] and see §15 above.

(with Equity) ("*Guidance on the Conduct of Employment Agencies and Employment Businesses Regulations 2003*"), contained no reference to Spotlight.[37]

54. The Judge found at [**58**] [**CB xx**] that: *"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."*

55. As stated in Bennion: "*Where the punishment is severe, great weight will be given to the principle against doubtful penalisation.*"[38] The severity of the potential sanction, including the risk of potentially retrospectively causing individuals to have unknowingly contravened the law, has the effect that the principle against doubtful penalisation must be given considerable weight in this case. After noting the severity of the potential consequences for Spotlight, the Judge stated: "*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 penary impact and whether the language of the Act supports such an interpretation. I would strongly lean against such a finding*."[39]

56. To the extent that there is any ambiguity in the language of s. 13(2) (which Spotlight maintains there is not), it should be resolved in favour of Spotlight.

Law should be fair and just

57. Bennion states: "*It is a principle of legal policy that law should be just, and that court decisions should further the ends of justice. This principle forms part of the context*

[37] [**Supp xx**].
[38] Bennion at 10.6.
[39] Judgment at [**58**] [**CB xx**].

against which legislation is enacted and, when interpreting legislation, a court should take it into account."[40]

58. As set out above at §§13 to 14, not only have regulators never considered Spotlight to be an employment agency (despite investigations to consider the impact of the Act on Spotlight) but, until very recently, it had consistently been Equity's position that Spotlight should not be considered an employment agency. Whilst such views are not determinative (as the Judge expressly noted at [**42, 57**] [**CB xx**]), these matters are part of the context against which the legislation is to be interpreted.[41]

59. This is all the more so where, as the Judge noted at [**30**] [**CB xx**], Equity's change in position appears to stem from the fact that Spotlight has been taken over by a US-based entity (§16 above). Equity's volte-face is arbitrary and unjustified given that there is no evidence that the change in ownership has had any impact on the fees charged to subscribers or on Spotlight's services (see above at §§11 and 16) and there was evidence before the Court that Equity is promoting its close links to other entities providing similar services to Spotlight.[42]

60. The construction and application now contended for by the Appellants would produce a result that would be unjust and unfair and, as stated by Lord Reid in *Inland Revenue Commissioner v Hinchy* [1960] A.C. 748 at [768], the court should "*assume that Parliament intends to act reasonably, and therefore to prefer a reasonable interpretation of a statutory provision if there is any choice*".

Ground 2: whether the Judge erred in her interpretation of "work-finding services"

61. The Judge determined that even if Spotlight were found to be an employment agency within s. 13(2) of the Act, the only work-finding service it provides is the Directory such

[40] Bennion 26.3.
[41] "*The concepts of fairness and justice in this context have a wide meaning, and are broad enough to encompass what may be described as social justice*" (Bennion 26.3).
[42] The fact Equity has offered discounts to its members for similar services such as IMDb Pro, WeAudition and Gravy for the Brain was addressed in Hood 2 §17 [**Supp xx**].

that Spotlight would be entitled (pursuant to Regulation 26(5)) to charge work-seekers a fee for including information about them in its Directory.

Correct interpretation and application of Regulation 26(5)(b)(i)

62. The Appellants' assertion that the Judge failed to address the correct test is wrong. The Judge correctly identified the issue as being whether Spotlight's "*only work-finding service is that of providing the kind of publication referred to* [i.e., the Directory]" at [**62**] [**CB xx**], which mirrors the language in Regulation 26(5)(b)(i). The Judge also set out the correct definition of "*work-finding service*" in Regulation 2 at [**12**] [**CB xx**].

63. It is not necessary, as the Appellants contend, to consider separately whether an alleged service is both a service and a service for the purpose of finding employment. In any event, the Judge evidently considered both elements and found that each of the four alleged services were services,[43] but either were not "*work-finding*" and/or were not a separate service from the Directory (meaning the Directory was the "*only work-finding service*").

64. Whilst this ground of appeal is stated to be the Judge's "*interpretation*" of "*work-finding service*", most of the arguments concern the Judge's application of Regulation 26(5)(b)(i). The arguments are misconceived for the reasons below.

Tailored email alerts

65. The Spotlight platform enables industry professionals to advertise casting requirements directly to performers and agents through postings or emails, which a performer can sign up to receive. The Judge considered examples[44] of such email alerts and concluded that "*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*". In determining that email alerts were not a "*work-finding service*", the Judge took into account at [**62**] [**CB xx**] that the emails were not "*particularly tailored*", "*were sent out automatically*" and "*[t]here was no human input*" from Spotlight.

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[43] Judgment at [**62**] [**CB xx**]; each of the four alleged services is referred to in the Judge's analysis as a "service".
[44] The emails were set out in an exhibit to the Appellants' evidence [**Supp xx**].

66. The Appellants argue (Appeal Skeleton §§40-41) that the fact the emails were not particularly tailored and the absence of human interaction are irrelevant. That is plainly wrong. In considering whether the email alerts were a service provided for the purpose of finding or seeking to find a person employment, the extent of Spotlight's involvement in tailoring, and the degree of tailoring, are obviously relevant.

67. The Appellants further assert (Appeal Skeleton §42-43) that the Judge's finding that email alerts "*[were] not a service separate from the platform*" at [**62**] [**CB xx**] is "*an irrelevant consideration to the question of whether something is a work-seeking service in the first place*". However, Regulation 26(5)(b)(i) requires consideration of whether "*the only work-finding service*" is the Directory (emphasis added). Consequently, the Judge was not only entitled, but required, to consider (as Spotlight argued) whether the alleged additional services were separate from the Directory. Further, the Appellants are also wrong in asserting that the Judge did not consider whether the email alerts constituted a service: at [**62**] [**CB xx**] she stated: "*It [i.e.,* the email alerts*] was not a service separate from the platform.*"

Access to studios

68. In describing this service, the Judge said at [**62**] [**CB xx**]: "*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 Judge therefore considered that this was not a service by which Spotlight found or sought to find work for individuals.

69. The Appeal Skeleton at §44 complains that the Judge did not explain why "*a service to improve skills*" is not work-finding. However, this observation was not made in respect of the access to studio service. In any event, it was reasonable for the Judge to distinguish between services that merely improve skills that might ultimately facilitate an individual finding work and services that in fact find work for the individual.

Facilitating the finding of an agent

70. The Directory offers a 'Talent Scout' feature, which allows performer subscribers to indicate if they do not already have an agent and are looking for representation, and agencies can filter to identify those individuals.[45]

71. The Appellants complain at §45 that (i) the Judge did not apply the correct test because the provision of information is sufficient to constitute a service and "[t]*he fact a person wishes to have an agent is "information" which is provided by the Defendant*", and (ii) there is no analysis of why this is not a work-finding service.

72. These criticisms are wrong. First, the Judge found this to be a service. Secondly, the Judge explained at [**62**] [**CB xx**] why it was not work-finding: "*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 was reasonable for the Judge to consider that this was not a work-finding service performed by Spotlight; on the contrary, the purpose was to enable performers to find an agent who will engage in work-finding services for the performer.

73. Even if the Judge had erred in whether this was a work-finding service, the Appellants do not challenge her finding at [**62**] [**CB xx**] that this "*was not a separate service as it was a feature of the Directory*"; consequently, the Directory would remain the "*only work-finding service*" provided by Spotlight.

Appellants' generic criticisms of the Judge's application of Regulation 26(5)(b)(i)

74. The Appellants take issue with the Judge's conclusions that "*these services were a number of steps removed from what the Conduct Regulations were intended to cover*" and that the services "*merely enable an individual to improve their skills and marketability*". Contrary to the Appellants' assertion that these conclusions are not explained, the latter explains the former. It was plainly reasonable for the Judge to conclude that services that merely improve skills or marketability do not amount to services by which Spotlight finds or seeks to find work for performers. Further, the

[45] Hood 1 §25 [**Supp xx**].

Appellants' assertion at §49 of the Appeal Skeleton that the Judgment is not supported by the evidence is neither explained nor correct.

75. The consistent flaw in the Appellants' approach is evident in Appeal Skeleton §48, which describes improving skills as "*the key means by which work-seekers improve their chances of gaining employment*". As the Judge determined, the definition of "*work-finding service*" does not extend to services that merely improve a performer's skills or marketability and, therefore, their chances of obtaining work; rather it applies to services by which the entity finds or seeks to find work for the performer.

Ground 3: relief sought in respect of the level of subscription fees charged by Spotlight

76. The legal basis for, and precise nature of, the relief sought under this ground has been unclear since the outset. The relief now stated to be sought in the Appeal Skeleton is, in summary:[46] (i) 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; and (ii) an order that "*the question of whether the fees charges by the Defendant are such a reasonable estimate*" [sic] be remitted (Appeal Skeleton §55).

77. As to (i), this is no more than a declaration of the requirement set out in Regulation 26(5)(b)(ii) - as the Judge noted at [**63**] [**CB xx**]. If the Court finds Spotlight to be an employment agency within s. 13(2) and that it does not satisfy Regulation 26(5)(b)(i), then, as a matter of law, Spotlight must comply with Regulation 26(5)(b)(ii). Consequently, the declaration sought was always redundant.

78. As to (ii), the Appellants did not seek a declaration as to whether the fees charged by the Defendant are a reasonable estimate at first instance.[47] Consequently, it is not an issue that should be remitted.

[46] Appeal Skeleton §55.
[47] Particulars of Claim [**CB xx**].

79. The basis for this ground is stated at §9 of the Appeal Skeleton to be that there was no evidence to support the Judge's "*conclusion*" that the fees charged by the Respondent are no more than a reasonable estimate of cost. However, the Appellants accept (correctly) that the Judge did not make a finding on this issue (Appeal Skeleton §54); the Judge merely commented *obiter* that she would have "*very real difficulty on the evidence*" in concluding the fees were not a reasonable estimate, based on the evidence she summarised at [**63**] [**CB xx**].

80. The Appeal Skeleton presents an incomplete picture of an exchange of emails on 12 and 13 November 2025 between the parties' solicitors. Spotlight's solicitors in fact confirmed that the Judge's comments on the level of fees were *obiter*.

81. There is no issue properly before this Court on this ground.

CONCLUSION

82. For the reasons above, the Appellants' appeal should be dismissed and the Appellants ordered to pay the costs of the appeal (the Appellants having already complied with the Order dated 23 October 2025 to pay the costs of the trial).

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