

## Employment rights claims more limited under James v Greenwich decision

In an important decision rendered on February 5, the Court of Appeal has made it significantly more difficult for contractors to claim employment rights when they are working under agency contracts.

### Contractor Needs To Show 'Good Reason'

The case which has been in the courts since 2004, is James v. Greenwich. In it, Ms. James claimed employment rights for her temporary job at the Greenwich Council. James was replaced by another temporary worker after taking time off. James had worked under an agency contract with Greenwich Council for three years.

James had claimed that there existed an implied employee contract with the end-client. "The Court of Appeal, however, has supported the ruling that, where an agency contract is genuinely in place and it reflects and is consistent with the arrangements then it will not usually be necessary to imply a contract with the end-client," explains Theresa Mimmagh, senior consultant at the legal consultancy [Lawspeed](#) which specialises in recruitment affairs.

"The courts have made it clear that the individual circumstances of each case must be inquired into to determine whether it is necessary for a contract to be implied. However where there are agency contracts in place which reflect the arrangements, it appears that such situations will be rare.

### Guidance Made Explicit

The decision makes certain rules of guidance with regard to implied contracts explicit:

- o The court will first look at the actual work arrangements to decide if there is any reason to consider the existence of an implied contract;
- o If there is a real [right of substitution](#) then there is no reason to consider an implied contract
- o Where the arrangements are genuine and accurately represent the actual relationship between the parties- as is likely to be the case where there was no pre-existing contract between the worker and the end user' - it is likely to be a rare case where the existence of an implied contract will be considered

In the case of James v. Greenwich, where there was clearly an agency relationship in place, and where the client did not guarantee work throughout the period of contract, nor did the client pay James when work did not take place, there is no reason for the courts to consider the issue of an implied contract.

"This ruling is positive for agencies and will make it more difficult for contractors to prove the existence of such a contract," Mimmagh adds.

Other factors that the courts found did not apply in this case were the length of time that James had worked for the Council. "Length of time is not in itself a basis for a claim in the determination of employment status," Mimmagh reminds us.

The Court of Appeals approved guidance given at the Employment Appeals Tribunal hearing, which is now likely to be the touchstone for all future employment status agency claims.

It is not clear that this decision will have any affect on [IR35](#). While the [case law](#) used in IR35 is the same as in employment status decisions, it is the basis of the IR35 law to examine the existence of an implied contract. That mandate seems to be unaffected by this decision, although future case law is needed to make that certain.

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“ This ruling will reassure agencies and make it more difficult for contractors to prove the existence of such a contract ”

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