

Implications of UK Supreme Court ruling on Uber driver employment status for KBB retailers and installers.

Introduction

This briefing paper, published by The British Institute of Kitchen, Bedroom & Bathroom Installation, relates to a recent Supreme Court Ruling between the subcontracted driver workforce and the business they work for / with, Uber.

On 19th February 2021 the UK Supreme Court decided that under UK employment law, Uber drivers should be classified as 'workers' who are therefore entitled to work benefits such as paid holiday. Uber had argued that the drivers were independent, third-party contractors.

The judgment is the conclusion of a legal dispute that started with an Employment Tribunal decision in 2016 and went subsequently to the UK Court of Appeal and then the Supreme Court in March 2021.

The ruling has potentially significant implications for KBB retailers that subcontract installation work to independent installers. This briefing note outlines the main points of the ruling and the considerations for KBB retailers and installers.

Overview

The main implication of the Uber ruling is that the totality of the relationship between businesses and subcontractors will be looked at in determining employment status, rather than just the specific contractual terms.

Broadly speaking, if businesses (retailers) are recognised as having an undue level of control over how the subcontractor goes about their work and allows no room for uncapped negotiation over what they are paid, they are likely to be classified as employers and therefore carry all of the obligations that go along with it.

There are a set of specific criteria that should be used in determining the level of control a business has over a subcontractor:

- Are prices set for particular tasks, with little or no freedom for contractors to negotiate? Uber's fixed pricing system was the primary reason it was ruled as an employer.
- Are there standard Terms & Conditions that contractors have to sign for a particular role? This again is seen as something an employer does, rather than a truly independent contractor who may have their own contract amendments or may even ask to sign their terms.
- Does the business exercise control over how people can take jobs? If some contractors get access to more jobs if they perform well and regularly take up work, or lose jobs if they don't, which constitutes control.
- Does the business exercise control over how they do the jobs? If they strictly define how jobs are done, what standards to hit and enforce them through feedback or penalties, which are all signs of control.
- Does the business restrict communication between the contractor and the end client? This doesn't mean whether a business allows communication, but relates to the restriction of what can and can't be discussed – to include pricing.
- Finally, is there a general expectation that contractors will do work for the business even if there's some contractual allowance to say no?

KBB installation considerations

The key consideration is of the nature of the relationship between retailers, installers and consumers. Retailers that allow for rates and ways of working to be negotiated by installers on a job-by-job basis, or for installers to have a direct commercial relationship with consumers, are unlikely to be affected.

Where retailers have a tightly defined contractual relationship with installers that does not allow for direct relationships with consumers nor any room for uncapped negotiation over their rates and ways of working, it is likely that the installers will have to reclassify as paid employees or face the risk of burdensome regulation or vulnerability to employment tribunals.

Retailers that operate this business model are recommended to get ahead of any likely regulation by coming to terms with installers, either agreeing new employment terms, shifting to an alternative model or hybrid version.

The retailers and installers that work through the Protect My Install platform are examples of this model in practice in a way that offers reassurance and consistency of delivery to both, as well as to consumers. The platform allows retailers to signpost their customers directly to installers they know will work to expected standards and negotiate a fair price, without the need to take on full employer obligations.

Summary of recommendations

- Retailers that rely on subcontracted installers should audit the terms of their commercial relationships against the criteria outlined above without delay.

- If it is clear that commercial relationships with subcontracted installers do fit the criteria established by the Supreme Court for employee status, retailers should decide whether to:
 - Formally agree terms of employment with installers so that they are fulfilling all necessary obligations;
 - Adapt their working model and relationship with installers so that they do not meet the criteria for employment status that has been established by the Supreme Court's Uber ruling;
 - Consider use of third party platforms, such as Protect My Install or other credible intermediaries, and a hybrid, demonstrating they no longer hold direct relationships with subcontracted installers. As an example, this could mean the sale and subcontracting of dry fit installation, utilising the third party platform to transact the supplementary work.

ENDS

NOTES & USEFUL LINKS:

About The British Institute of Kitchen, Bedroom & Bathroom Installation (BiKBBI):

The British Institute of Kitchen, Bedroom & Bathroom Installation (BiKBBI) represents over 6,400 installation businesses across the UK, as well as a number of KBB retailers, manufacturers and distributors of KBB product. The organisation launched in 2006, is Secretary of State Sanctioned and not-for-profit registered, registered in England & Wales (06533488). BiKBBI is responsible for education, standards and the support of business that operate within the KBB installation sector, whilst supporting consumers with free guidance and access to business that have been independently accredited. See: www.bikbbi.org.uk for further information.

Supreme Court Press Briefing:

<https://www.supremecourt.uk/press-summary/uksc-2019-0029.html>

Uber response:

<https://www.uber.com/en-GB/blog/supreme-court-verdict/>

Further press information:

This Briefing Paper was issued The British Institute of Kitchen, Bedroom & Bathroom Installation Limited. Further information can be obtained from Erin Sealy, (comms@bikbbi.org.uk).