

Supreme Court **rocks foundation** of employment status!

The Supreme Court has handed down its judgment in *Autoclenz Ltd v Belcher and Others*. This is the most significant employment status judgment since *Express* and *Echo Publications* and before that *Ready Mixed Concrete*. It is not an overstatement to say that the foundations of employment status have been rocked to their very core.

Autoclenz engaged car valeters on a self-employed basis. The contracts contained the requisite mutuality of obligations and substitution clauses. The individuals argued that the clauses did not reflect the actual agreement between the parties and that they were obliged to provide the services personally. The highest court in the land agreed 100% with the individuals and found that the substitution and mutuality clauses were not a true reflection of the agreement.

More importantly, the Supreme Court held that when assessing the veracity of contractual clauses Tribunals should take into account the expectations of the parties (did anyone expect a substitute to be sent?) and the bargaining power between the parties (was the contract a 'take it or leave' contract?). The Supreme Court also suggested that the conduct of the parties may be such that it trumps the written terms agreed between the parties. In essence, the Supreme Court have widened an individual's scope to claim that the agreed written terms are a sham and dismissed the sanctity of the written contract.

The bar has just got a lot higher for contractors engaging self-employed subcontractors with the risk of Employment Tribunal claims increasing significantly. HMRC will no doubt seek to exploit this judgment in good time also.

Given the potential ramifications of this judgment Accountax will be reviewing the position and providing written guidance as well as discussing its effect at our Autumn Update seminars. If you wish to book a place simply visit our website and complete the booking form or contact the office on **08450 660 035** for more details.