MIKE PITT, employment, company and commercial law specialist, of Oldham's Pearson Hinchliffe, tries to unravel who actually "employs" a temporary worker

I SUSPECT that there will be few firms in Oldham that have never hired a "temp" through an employment agency.

Although temping has fallen from its 1998 peak, when almost 8 per cent of the UK workforce was made up of agency workers, the Government estimates that there are still around 700,000 agency workers in Britain at any one time. Employers like the flexibility of combating staff shortages by using workers who do not have to be on their regular payroll, while many temporary workers like to be able to use short-term assignments to accommodate career and business goals.

Despite the widespread use of temps by companies in Britain, the law is surprisingly unclear about who the temp actually works for. In the event of disputes, temps have tended to bring tribunal claims against their employment agency. But now it appears that the client firm may in some cases be the employer, even where this expressly contradicts what was provided by written contract.

In a recent case considered by the Employment Appeal Tribunal, the contracts between the various parties stated that the temp was not an employee of the agency, RHG, or the Royal National Lifeboat Institution, its client. But when the temp brought an unfair-dismissal case against the RNLI, the tribunal examined the extent to which it was possible to look behind the written contracts to establish the true nature of the working relationship.

The Employment Appeal Tribunal ruled that the temporary worker, whom the RNLI later made permanent, was an RNLI employee from the time the organisation first employed her as a temp. This meant that she had enough continuous service with the RNLI to claim unfair dismissal.

The tribunal was particularly influenced by the fact that the RNLI always intended to appoint the woman permanently to the job she had taken through the employment agency. Once appointed permanently, she continued to do exactly the same job she had done as a temp, albeit on different terms and conditions.

The ruling does not mean that tribunals can always disregard written contracts and look at what actually happened. An important factor in the RNLI case was that there were discrepancies between the various written agreements.

Nevertheless, it will often be impossible for "employers" to know where they stand regarding temporary workers, so long as disputes over employment status are being resolved by the courts on a case-by-case basis in this way. New legislation is needed to clarify the situation.