



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Heslop  
**Respondent:** Centrex Computing Services Limited

**Heard at:** North Shields                      **On:** 8 and 9 October 2019  
**Before:** Employment Judge Deeley

## Representation

**Claimant:** Dr L Sherlock (Counsel)  
**Respondent:** Mr M Heslop (Respondent's Managing Director)

**JUDGMENT** having been sent to the parties on 21 October 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## WRITTEN REASONS

### INTRODUCTION

1. The Claimant requested written reasons for this judgment at the hearing on 9 October 2019.

### Background

2. The Claimant and Mr Heslop were in a relationship for over 30 years before separating when Mr Heslop left the family home in 2015. Mr Heslop set up and ran several businesses whilst he was in a relationship with the Claimant, (including the Respondent's business). The Claimant and their children supported or were involved in many of those businesses.
3. The Respondent's corporate entity was incorporated on 9 October 2006. The nature of the Respondent's business has evolved over time. However, the Respondent's business currently involves providing IT services support to third party clients.
4. Mr Heslop has always been a director and shareholder of the Respondent. The children of Mr Heslop and the Claimant have also been directors and shareholders of the Respondent at various times. The Claimant has never been a director or a shareholder of the Respondent at any time.
5. Mr Heslop became the Managing Director of the Respondent, after the previous Managing Director was made redundant in 2015 due to the Respondent's financial difficulties.
6. The Claimant and Mr Heslop's three daughters were employed by the Respondent until their redundancies in March 2017, namely:

- 6.1 Mrs Glynis Hewitt (NICC (call centre) Manager);
- 6.2 Carolyn Wilson (Commercial Director); and
- 6.3 Miss Susan Heslop (junior) (Financial Controller).

Mrs Hewitt and Miss Heslop continued to work for the Respondent after March 2017 on a consultancy basis.

7. Mr Heslop's daughter from a previous relationship, Mrs Addelle Abdy, was employed by the Respondent from around October 2014 and remained employed by the Respondent in the role of Transport Manager at the time of the hearing of this claim.
8. The Claimant and Mr Heslop's son, Mr Gareth Heslop, was employed by the Respondent as a driver until he was made redundant in early 2019.
9. Other senior managers within the Respondent's business at the relevant times for the purposes of this claim included Martin Rulton (Operations Director) and Brian Murphy.

### **Tribunal proceedings**

10. The Claimant submitted a claim for unlawful deductions from wages in her claim form dated 24 March 2019, following an ACAS early claim conciliation period from 19 February to 19 March 2019 (Reference R120359/65).
11. The Respondent submitted its response to the Claimant's claim on 27 April 2019. In its response, the Respondent denied that the Claimant was an employee or a worker of the Respondent and denied that it owed the Claimant any unpaid wages.
12. The Claimant considered the Respondent's response and decided that the wording of the response was such that her contract with the Respondent was terminated. The Claimant then applied for the Tribunal's permission to amend her claim to include claims for unfair dismissal and wrongful dismissal.
13. Employment Judge Buchanan considered the Claimant's application during a Preliminary Hearing in person on 19 June 2019 and gave the Claimant leave to amend her claim. Employment Judge Buchanan set out a detailed list of issues for consideration at the full hearing at paragraph 3 of his case management summary.
14. The Respondent applied for specific disclosure of documents relating to the Claimant's business. Employment Judge Garnon considered this request at a telephone Preliminary Hearing on 25 September 2019 and rejected the request.
15. The Claimant was represented at this hearing by Dr L Sherlock. The Respondent was represented by Mr Heslop.

### **Evidence considered**

16. The parties presented witness evidence from the following witnesses:
  - 16.1 **Claimant** – the Claimant herself, Mrs Glynis Hewitt, Mrs Carolyn Wilson, Miss Susan Heslop (junior) and Mr Michael Robertson;
  - 16.2 **Respondent** – Mr Ronnie Coxon, Mrs Adelle Abdy, Mr Martin Rulton and Mr Michael Heslop.
17. The parties submitted a joint hearing file. I considered those documents to which my attention was drawn during the course of the hearing, but did not read any other documents in the hearing file.

18. Dr Sherlock provided a skeleton argument as part of the Claimant's closing submissions. I also heard oral submissions from Dr Sherlock and from Mr Heslop.

## CLAIMS AND ISSUES

### Claims

19. The claims were identified by Employment Judge Buchanan at paragraph 2 of the Preliminary Hearing orders from 19 June 2019 as follows:

- 19.1 a claim of unauthorised deduction from wages, under Part II of the Employment Rights Act 1996 (**ERA**);
- 19.2 a claim of ordinary unfair dismissal, under sections 94 and 98 of the ERA; and
- 19.3 a claim of breach of contract (wrongful dismissal).

### Issues

20. The issues were identified by Employment Judge Buchanan at paragraph 3 of the Preliminary Hearing orders from 19 June 2019. I have set out the key issues that I was asked to determine at the hearing, with the agreement of the parties, as follows:

#### *General*

- 20.1 Was there a contract between the Claimant and the Respondent?
- 20.2 If so, was any such contract tainted with illegality?
- 20.3 If so, is it appropriate for such contract to be enforced to the Tribunal?

#### *Unauthorised deductions from wages claim*

- 20.4 Was the Claimant a worker of the Respondent during the period of January – April 2019 (i.e. the period to which the unauthorised deduction of wages claim relates)?
- 20.5 If so, was the Claimant entitled to be paid her wages for the period 1 January 2019 – 27 April 2019?
- 20.6 If so, has there been an unauthorised deduction from the wages of the Claimant and what sum (if any) is the Claimant entitled to receive from the Respondent?

#### *Unfair dismissal claim*

- 20.7 Was the Claimant an employee of the Respondent?
- 20.8 If so:
  - 20.8.1 what was the effective date of termination of the employment of the Claimant by the Respondent (**EDT**)?
  - 20.8.2 had the Claimant been continuously employed by the respondent for a period of not less than two years ending with the EDT?
  - 20.8.3 did the Respondent have a potentially fair reason for the Claimant's dismissal?
  - 20.8.4 did the Respondent act reasonably in treating that reason as sufficient to dismiss the Claimant?

20.9 If the Claimant was dismissed unfairly, what compensation should be awarded?

*Wrongful dismissal claim*

20.10 If the Claimant was an employee of the Respondent, was she dismissed in breach of contract?

20.11 If so, what notice pay is the Claimant entitled to receive from the Respondent?

**RELEVANT LAW**

21. All of the statutory provisions referred to in this judgment are contained within the ERA.

***Creation of a contract***

22. The first question for me to consider is whether there was a contract between the Claimant and the Respondent at all. In order for there to be a contract, there must be the following key elements:

22.1 offer and acceptance;

22.2 consideration – i.e. something of value must be exchanged by the parties; and

22.3 the parties must intend to create legal relations.

***Contract terms***

23. The starting point in determining whether an individual is an employee or a worker for the purposes of s230 of the ERA is to identify the terms of the contract and what they mean. The express terms of a contract are, of course, those expressly agreed, in writing or orally, by the parties. Where there is a written contract, the issue may arise whether it contains the whole of the agreement between the parties (as per the Supreme Court's decision in *Autoclenz Ltd v Belcher* [2011] ICR 1157 SC). However, this is a case where the parties agreed that no written contract existed.

24. I must have regard to key factors including those set out below when determining the terms of a contract in the absence of any written terms:

24.1 the intention of the parties at the time at which the contract was entered into;

24.2 the conduct of the parties during the period for which the contract subsisted;

24.3 any terms implied into the contract by the courts; and

24.4 any terms implied into the contract by statute.

***Illegality***

25. This claim relates to an alleged contract. If such contract existed between the parties it is, on the face of it, lawful. However, the Respondent contends that any such contract was tainted by illegality and should not be enforced.

26. The relevant question here is whether the Claimant honestly knew of any alleged illegality. I note that the Claimant should not be deemed to have a 'guilty mind', merely because she ought to have known of any alleged illegality (*Newlands v Simons and Willer (Hairdressers) Ltd* [1981] IRLR 359, EAT).

### **Employment status**

27. The relevant statutory provisions are as follows:

#### *Employment Rights Act 1996*

#### *230 Employees, workers etc*

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” ... means an individual who has entered into or works under (or, where the employment has ceased, worked under) –

(a) a contract of employment; or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of the client or customer of any profession or business undertaking carried on by the individual;

...

#### *Employee or non-employee*

28. There is no single factor that determines whether an individual is an employee or a non-employee (i.e. a worker or self-employed). The multiple test in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* 1968 1 All ER 433 QBD has been approved numerous times by the courts. The multiple test requires the Tribunal to consider three key questions when determining whether an individual is an employee:

28.1 did the individual agree to provide her own work and skill in return for remuneration?

28.2 did the individual agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of employer and employee?

28.3 were the other provisions of the contract consistent with its being a contract of service?

29. The courts have gone on to state that there is an 'irreducible minimum' without which it will be all but impossible for a contract of service to exist, which consists of:

29.1 *control* - the degree of control exercised by the potential employer over the individual;

29.2 *personal performance* – i.e. whether the individual was required to perform the services or whether they could provide a substitute; and

29.3 *mutuality of obligation* – i.e. whether there was an obligation on the potential employer to provide work to the individual and an obligation on the individual to perform that work.

30. However, it is clear from the caselaw that a wide range of other factors may also be taken into account. These factors include:

- 30.1 whether the individual is **in business on their own account** – i.e. whether they carry the financial risk of that business – e.g. *Cormie v Rodger t/a Dalneigh Post Office and Stores* EATS 0036/11;
  - 30.2 the **provision of monetary benefits**, including sick pay, holiday pay and pension benefits – e.g. *Forest Mere Lodges Ltd* EAT 0426/06 that;
  - 30.3 the **tax and national insurance arrangements** applied to any payments – e.g. *O’Kelly and others v Trusthouse Forte plc* ICR 728, CA;
  - 30.4 the degree of **organisational integration** – e.g. *Motorola Ltd v (1) Davidson (2) Melville Craig Group Ltd 2001* IRLR 4, EAT;
  - 30.5 whether the individual is **engaged directly or via a third party** – e.g. *Catamaran Cruisers Ltd v Williams and others* 1994 IRLR 386, EAT;
  - 30.6 the **parties’ intentions** as to the status of their working relationship, although the courts will always look at the substance of the matter – e.g. *Young and Woods Ltd v West* 1980 IRLR 201, CA; and
  - 30.7 the **custom and practice** applying to a particular trade or industry – e.g. *O’Kelly and others v Trusthouse Forte plc* ICR 728, CA.
31. I am also mindful of the Court of Appeal’s warning that a ‘checklist approach’ must be avoided and that the Tribunal should consider the ‘bigger picture’ when determining these issues (*Hall (Inspector of Taxes) v Lorimer* 1994 ICR 218, CA).

#### *Worker or self-employed*

- 31.1 There is no statutory definition of ‘contract of service’, for the purposes of s230(3)(b) of the ERA and the definition of ‘worker’ must be determined by reference to the caselaw. This definition concerns the dividing line between those who are truly self-employed, carrying on a profession or business undertaking on their own account and entering contracts with clients or customers to provide work or services for them, and those who, while self-employed, in fact provide their services as part of a profession or business undertaking carried on by someone else.
- 31.2 The dividing line was considered by the Supreme Court in *Bates van Winkelhof v Clyde and Co LLP* [2014] ICR 730. Lady Hale emphasised again that there is not “a single key with which to unlock the words of the statute in every case.” The authorities identify a number of tests or approaches, each of which may be useful in seeking to draw the distinction in the individual case.

#### **Wages**

32. The relevant statutory provisions are as follows:

##### *Employment Rights Act 1996*

##### *13 Right not to suffer unauthorised deductions*

- (1) An employer shall not make a deduction from wages of a worker employed by him unless -
  - (a) the deduction is required or authorised to be made by virtue of a statutory provision or relevant provision of the worker’s contract, or
  - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

...

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

...

### ***Unfair dismissal***

33. The relevant statutory provisions are set out in:

33.1 Part IX of the ERA (Termination of Employment), including sections 94, 97, 98 and 108 of the ERA; and

33.2 Part IV, Chapter 1 (relating to continuous employment) of the ERA.

34. I note that the burden is on the employer to show what the principal reason for dismissal was and that it is a potentially fair reason: *Timex Corn v Thomson* [1981] IRLR 522, EAT. If an employer seeks to rely on several reasons, he must either establish them all, or show that the dismissal was justified solely on those that he can establish: *Smith v City of Glasgow District Council* [1987] IRLR 326, [1987] ICR 796, HL

### ***Wrongful dismissal***

35. This is a claim for breach of contract at common law. The Tribunal has jurisdiction to consider this claim if the Tribunal concludes that the Claimant had a contract of employment with the Respondent. The relevant statutory provisions are set out in s3 of the Employment Tribunals Act 1996, subject to Regulation 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994,

36. The Claimant did not have any written contract with the Respondent. The law set out above under the heading 'Employment Status' in relation to contract terms which have not been reduced to writing is also applicable to this claim. However, any terms agreed between the parties would also be subject to the statutory minimum notice provisions set out in s86 of the Employment Rights Act 1996.

## **FINDINGS OF FACT**

### ***Context***

37. This case is heavily dependent on evidence based on people's recollection of events that happened over several years. In assessing the evidence relating to this claim, I have borne in mind the guidance given in the case of *Gestmin SGPS -v- Credit Suisse (UK) Ltd* [2013] EWHC 3560. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means

that people can sometimes recall things as memories which did not actually happen at all.

38. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to parties, including employees and family members. It was said in that case: *'Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.'*
39. I wish to make clear from the outset that simply because I do not accept one or other witness' version of events in relation to a particular issue does not mean that I consider that witness to be dishonest.

### **Contract and contract terms**

40. It is common ground that there was no written contract of any nature between the Claimant and the Respondent. The parties agreed that the following contract terms applied to the Claimant's arrangements with the Respondent from February 2010 onwards:
- 40.1 the Claimant would receive a monthly payment, determined by Mr Heslop on behalf of the Respondent. Mr Heslop decided in late 2017 that the amount of that payment would be reduced to around £2000 net per month;
- 40.2 the Claimant would be eligible to receive the same benefits as other staff, e.g. death in service cover, pension scheme, fuel card and use of company vehicles; and
- 40.3 the Claimant would provide a range of services to the Respondent, depending on what was required from time to time.
41. I have made more detailed findings regarding the Claimant's services in my findings of fact regarding the Claimant's employment status below.

### **Illegality**

42. Mr Heslop contended that any contract between the Claimant and the Respondent was tainted by illegality because the purpose of the contract was to reduce Mr Heslop's personal tax liabilities. I reminded Mr Heslop that if that were the case, both he and the Respondent may also face investigation regarding any additional tax and national insurance liabilities. However, Mr Heslop confirmed at the start of the hearing of this claim that he wished to continue to pursue this issue as part of the Respondent's defence to the Claimant's claim.
43. I find that the contract was not tainted by illegality because Mr Heslop's accountants advised him to make the arrangements for the Claimant's salary as a legitimate means of reducing his tax liabilities. In particular:
- 43.1 it was not disputed that Mr Heslop received tax advice from his accountants in 2006 advising him that he should consider paying part of his wages to the Claimant to reduce his liability for higher rate tax. The Claimant was not present during Mr Heslop's discussions with the accountants;
- 43.2 Mr Heslop stated that he discussed the accountants' advice with the Claimant. The Claimant does not recall that discussion. I accept the Claimant's evidence that she was aware she would be paid a wage by the Respondent, but that she was not aware of the tax advice that Mr Heslop had received;



43.3 in any event, it was not disputed that Mr Heslop decided how much the Respondent would pay the Claimant each month since this arrangement started in February 2010. For example, there is email evidence in the hearing file demonstrating that Mr Heslop reduced the Claimant's payments unilaterally in July 2017 to around £2000 net per month. The Claimant did not raise any complaints regarding Mr Heslop's decision.

44. In the alternative, if my findings are incorrect and the contract was tainted with illegality, I find that the Claimant was not aware of any such illegality. I accept the Claimant's evidence that Mr Heslop made the arrangements for payment of her wages through payroll from February 2010 onwards and that she was not aware of the reasons for the structure of her pay by the Respondent.

### ***Employment status***

45. I heard detailed evidence from both parties regarding the issue of the Claimant's employment status from 2010 onwards. I have summarised my key findings on these points below.

### ***A - Parties' intention regarding the Claimant's role***

46. It is common ground that the Claimant had invoiced the Respondent as a supplier from around 2006 to 2010. This arrangement changed in February 2010 when the Claimant was placed on the Respondent's payroll at Mr Heslop's request.

47. However, the parties dispute both:

47.1 their original intentions regarding the Claimant's role with the Respondent in 2010; and

47.2 the status of the Claimant's role from February 2010 until 27 April 2019.

48. The Claimant maintains that she was an employee of the Respondent at all times during their arrangement from February 2010 until 27 April 2019. The Claimant's evidence was that she was aware that she would receive a wage from the Respondent, in return for carrying out a range of services to the Respondent on a flexible basis.

49. The Respondent maintains that this arrangement was purely for the purposes of making Mr Heslop and the Claimant's financial affairs more tax efficient. Mr Heslop described this as an arrangement to 'share' Mr Heslop's salary with the Claimant and thus avoid or reduce the amount of higher rate tax paid by Mr Heslop. Mr Heslop's evidence was that he continued to 'share' his salary with the Claimant after they separated because she was still living in the family home and because he thought it was 'the right thing to do'.

### ***B - Documents***

50. It is common ground that there are no written terms which would assist the Tribunal to determine the nature of the Claimant's agreement with the Respondent. I note that the parties agreed that:

50.1 the Claimant had no written contract of employment or engagement with the Respondent;

50.2 other family members (Mrs Hewitt, Mrs Wilson and Miss Heslop) were employees of the Respondent until their redundancies in 2017, but that they also had no written contracts of employment or engagement;

50.3 another family member (Mrs Abdy) was an employee of the Respondent, but she had a written contract of employment on terms similar to those set out in a standard template contract that was included in the hearing file.

**C - Pay and benefits**

51. I have already noted that the Claimant was paid a varying amount via payroll each month and that the amount was decided by Mr Heslop on behalf of the Respondent on a unilateral basis. The parties also agreed that:

51.1 the Claimant's pay was subject to PAYE deductions for tax and NICS;

51.2 the Claimant was issued with monthly payslips and received her P60 at the end of each year, copies of some of which were included in the hearing file;

51.3 the Claimant was enrolled into the pension scheme for a short period of time when the Respondent was first subject to auto-enrolment legislation. The Respondent paid employer pension contributions on behalf of the Claimant into the pension scheme. The Claimant later opted out of paying pension contributions due to financial constraints; and

51.4 the Claimant participated or was eligible to participate in other benefits, such as death in service insurance and the Respondent's fuel card. In addition, the Respondent insured the Claimant on its motor vehicle fleet policy for both work and domestic purposes.

52. The Claimant did not seek to argue that she was entitled to holiday pay or sick pay and these benefits were not provided to the Claimant by the Respondent.

**D - Services provided by the Claimant to the Respondent**

53. The Claimant and her witnesses' statements set out detailed evidence in relation to services that they state she performed for the Respondent. Their evidence was that the Claimant continued to provide services on a regular basis to the Respondent up until March 2017, when Mrs Hewitt, Mrs Wilson and Miss Heslop were made redundant. Their evidence was that the Claimant's services included the following duties, which she balanced with her childcare responsibilities for her grandchildren:

53.1 acting as Transport Manager prior to Mrs Abdy's appointment in October 2014, including managing the Respondent's vehicle fleet, insurance claims, and vehicle damage checks;

53.2 carrying out back office duties from home after Mrs Abdy's appointment in October 2014, including continuing to perform vehicle movement checks and insurance claims;

53.3 driving trunk routes if required to cover the Respondent's drivers' sickness absence;

53.4 carrying out stock checks and transporting stock to the Respondent's depots in Ireland;

53.5 involvement in project activity e.g. managing the opening of the Ashington depot;

53.6 assisting with administration and catering for meetings at the NICC;

53.7 preparing Christmas hampers for the Respondent's staff and customers; and

53.8 cleaning the NICC office at Ashington.

54. Mr Michael Robertson gave evidence that he had some dealings with the Claimant whilst he was working at both Northgate and later at Van Match (both of which were van hire companies used by the Respondent from time to time). Mr Robertson gave a specific example of one van rental with high mileage which required frequent repairs. He stated that the Claimant was often involved with picking up or dropping off that van for its repairs.
55. The Claimant also gave evidence that she had set up a wedding stationery business as a hobby whilst working for the Respondent. She said that she ran that business with Mrs Hewitt, who at the time was employed full time by the Respondent. The Claimant's evidence was that she sought to build this hobby up into a business in October 2016 to give her a 'fall back option', due to the breakdown in relations with Mr Heslop at that time.
56. The Respondent's witnesses accepted that the Claimant provided limited services on an ad hoc basis, including moving vehicles, assistance with forms related to vehicles cleaning offices and preparing Christmas hampers for the Respondent's customers and staff.
57. However, the Respondent disputes the nature and frequency of those services provided. Mr Heslop's evidence was that any services provided were on the basis that either the Claimant was Mr Heslop's partner and/or to assist other family members who worked for the Respondent. Mr Heslop stated several times that the Claimant was never an employee or worker of the Respondent.

***Conclusions on employment status***

58. I have considered the evidence that the parties gave in relation to whether the Claimant was an employee or worker of the Respondent. The key findings arising from that evidence are set out below.
59. It is common ground that:
- 59.1 the Claimant had no fixed hours of work and that she was not required to attend the Respondent's premises to perform any services, unless they could only be performed at the Respondent's premises;
  - 59.2 the Claimant balanced her services to the Respondent, with her childcare responsibilities for her grandchildren, both in terms of the times when she carried out services and the way in which she carried out services. For example, the Claimant reduced her hours of work for the Respondent significantly after the birth of her grandchildren in order that her daughters and their partners could continue to work. However, the Claimant could take her grandchildren with her when she was carrying out certain tasks, e.g. vehicle checks;
  - 59.3 the Respondent provided most of the equipment used by the Claimant to perform any services (e.g. mobile phone, laptop, vehicles and cleaning equipment). However, the Claimant would invoice the Respondent for any additional products or services that she purchased (including products required for her to prepare Christmas hampers and ferry crossing tickets);
  - 59.4 the Claimant could not and did not send a substitute to provide services on her behalf to the Respondent. Mr Heslop gave evidence that if the Claimant was unable to perform a task, then the Respondent would arrange for someone else to provide those services; and

- 59.5 very little communication took place between the Respondent and the Claimant after March 2017 and any services that the Claimant provided to the Respondent reduced significantly after that time.
60. The Respondent's witnesses, except for Mr Rulton, accepted that the Claimant performed some services for the Respondent. In particular:
- 60.1 Mr Rulton said that he was not aware of the Claimant doing any tasks for the Respondent. However, I find that Mr Rulton was not aware of everything that was going on because he was based at the Respondent's premises in Milton Keynes and visited the Respondent's Ashington site infrequently;
- 60.2 Mr Heslop stated that the Claimant assisted with tasks that Mr Gareth Heslop performed as part of his driving role. For example, helping Mr Gareth Heslop to complete vehicle forms because, as Mr Heslop noted, Mr Gareth Heslop has learning difficulties. Mr Heslop also accepted that the Claimant made Christmas hampers for customers and staff.
- 60.3 Mr Coxon said that the Claimant sometimes carried out vehicles checks and helped with cleaning the office, although she was not the only one performing these tasks.
- 60.4 Mrs Abdy said that she would speak to the Claimant if she could not get hold of Mr Gareth Heslop at home. I accept Mrs Abby's evidence that if the Respondent had any insurance claims to be completed, the Claimant would assist Mr Gareth Heslop in completing the relevant forms.
61. I accept that the Claimant's services included the tasks set out below, in addition to those accepted by the Respondent's witnesses:
- 61.1 carrying out vehicle checks and dealing with the Respondent's hire companies. I accept Mr Robertson's evidence that the Claimant was involved in moving vehicles to and from the Respondent's premises and the hire company's premises (originally Northgate and later Van Match). I also accept Mr Robertson's evidence that the Claimant or Mr Gareth Heslop would often give the keys to the hire company and unload the vehicle before it was taken away for repair;
- 61.1.1 covering the Respondent's drivers' sickness absence on a few occasions;
- 61.1.2 assisting with administration and catering tasks for the NICC;
- 61.1.3 assisting with stock checks and the transfer of stock to Ireland.
- 61.2 I accept that the nature of the Claimant's services and the frequency with which she was required to provide those services reduced significantly after two key events:
- 61.2.1 when Mrs Abdy was appointed as Transport Manager in October 2014. I find that the Claimant no longer provided customer facing services after October 2014 and instead carried out back office services only; and
- 61.2.2 when Mrs Hewitt, Mrs Wilson and Miss Heslop were made redundant in March 2017. I find that the only services that the Claimant provided to the Respondent after March 2017 involved assisting Mr Gareth Heslop with vehicle related tasks, including the completion of forms relating to vehicles.

62. I accept the Claimant's evidence that she had no other 'clients' to whom she provided similar services.

**Termination**

63. It is common ground that the Respondent had the ability to terminate the arrangement with the Claimant at any time.

64. I note that Mr Heslop gave evidence that he terminated the Respondent's payments to the Claimant after the end of December 2018 payroll date because 'it was time to draw a line' under matters. However, I find that Mr Heslop did not notify the Claimant expressly that the agreement itself between the Claimant and the Respondent had terminated at that time.

65. It is common ground between the parties that Mr Heslop notified Miss Heslop to stop paying the Claimant after the Respondent's December payroll date. Mr Heslop did not inform the Claimant of his decision. The Claimant then emailed Mr Heslop on 16 December 2018 asking him to reconsider his decision. Mr Heslop did not respond to that email. The Claimant sent a further email on 11 February 2019 requesting a response, to which Mr Heslop did not respond.

66. The Claimant's evidence is that she regarded her arrangements with the Respondent as having terminated when the Respondent submitted its ET3 on 27 April 2019. She said that this was because the Respondent's ET3 stated that she had never been employed by the Respondent.

67. I find that:

67.1 the Respondent acted in breach of contract when deciding to stop payments to the Claimant; and

67.2 the Claimant accepted the Respondent's breach of contract on 27 April 2019, such that their arrangements terminated on that date.

**APPLYING THE LAW TO THE FACTS**

68. Applying the law to the facts, my reasons on each of the key issues are set out in the paragraphs below.

**Contract and contract terms**

69. I find that there was a contract between the Claimant and the Respondent, containing the contract terms set out in my findings of fact. The key reasons for my decision are that:

69.1 *the Respondent offered the contract terms set out below to the Claimant and she accepted these* – it is not disputed that prior to 2010 the Claimant invoiced the Respondent as a supplier for her services. The arrangements from 2010 onwards that are the subject matter of this claim marked a change in the way the Claimant's services were provided to the parties.

69.2 *there was consideration* – it was not disputed that the Claimant was paid by and received benefits from the Respondent, in return for the services that she provided to the Respondent; and

69.3 *the parties intended to create legal relations* - in reaching this decision, I have considered Mr Heslop's contention that the Claimant performed services to the

Respondent because she was his partner, rather than under any contract. However, Mr Heslop accepted that all other family members providing services to the Respondent were employed of the Respondent, regardless of whether they had written contracts with the Respondent or not. In addition, this arrangement continued after Mr Heslop and the Claimant separated. I have also taken into consideration the fact that the Claimant did not just receive cash payments under this arrangement, but participated in the other benefits provided to the Respondent's employees set out in my findings of fact.

***Was the contract illegal?***

70. I find that the contract between the Claimant and the Respondent was not illegal because the parties entered into the contract on Mr Heslop's accountants' advice as a legitimate means of managing Mr Heslop's tax affairs

71. However, even if the contract were illegal, I find that the Claimant was not aware of any potential illegality. As a result, the Claimant would be able to enforce the contract even if it were illegal.

***Employment status***

72. I find that the Claimant did not enter into and did not work under a contract of employment for the purposes of s230(1) of the Employment Rights Act because there was insufficient mutuality of obligation between the Claimant and the Respondent for the Claimant to be an employee of the Respondent. In particular:

72.1 the Respondent was not under any obligation to offer the Claimant work at any time during her engagement with the Respondent. I note that:

72.1.1 the Claimant's workload varied significantly throughout the period of her engagement with the Respondent from February 2010 to 27 April 2019;

72.1.2 the Respondent offered her very little work after Mrs Hewitt, Mrs Wilson and Miss Heslop were made redundant in March 2017. The Claimant's work during this period appeared to be limited to assisting Mr Gareth Heslop with tasks relating to his driving duties and dealing with a few queries from Mrs Abdy; and

72.1.3 the Respondent offered her no work at all from 1 January 2019 until 27 April 2019; and

72.2 the Claimant could refuse to perform work if she had other commitments (e.g. because she was carrying out childcare for her grandchildren).

73. In reaching this decision, I have taken into account the Claimant's submissions, including Dr Sherlock's submissions that:

73.1 the Claimant was available for work throughout the period of her employment;

73.2 the Claimant was paid via PAYE and received the same benefits as other employees of the Respondent throughout this period;

73.3 the Claimant had little control over any work offered to her – i.e. she was told what tasks she should perform and when these should be performed;

73.4 the Claimant performed any services herself and did not provide any substitute;

73.5 the Claimant used the Respondent's equipment when providing the majority of her services to the Respondent; and

73.6 s212 of the ERA (week counting in computing period for continuity of employment) applied to the period from March 2017 onwards when the Claimant's workload decreased significantly.

74. I accept the Claimant's submissions that she has demonstrated that the Respondent exercised substantial control over any services that she provided and that she was required to provide personal performance of her services to the Respondent. However, on balance I have concluded that the Claimant was not an employee of the Respondent because there was insufficient mutuality of obligation between the parties for an employment relationship to exist due to the reasons set out above and my findings of fact.

***Worker status***

75. I find that the Claimant satisfies the necessary tests to be categorised as a worker under s230(3)(b) of the Employment Rights Act for the following key reasons:

75.1 the absence of any written contract between the Claimant and the Respondent is not determinative of this issue;

75.2 the Claimant received a regular monthly payment from the Respondent, albeit that the Respondent changed the amount of such payment during the period from February 2010 to 27 April 2019;

75.3 the Claimant participated in the Respondent's benefits schemes from time to time, including its pension scheme and death-in-service benefit;

75.4 the Claimant had little control over the timing or the nature of her work;

75.5 if the Claimant accepted a task from the Respondent, she had to perform that task personally. The Claimant herself could not send a substitute to perform that task.

76. I find that the Claimant remained a worker of the Respondent continued up until 27 April 2019, when she regarded arrangements as having terminated. The Respondent did not take steps to terminate the contract at any time, including in December 2018 when Mr Heslop decided that the Respondent would no longer pay the Claimant.

77. In reaching this decision, I have taken into account the Respondent's submissions that:

77.1 the background to this claim involves a breakdown in marital relations and that this claim was unlikely to have been raised, if the Claimant and Mr Heslop's relationship had continued;

77.2 the Claimant did not raise any complaints regarding previous reductions in her pay by the Respondent;

77.3 the Respondent's business had suffered from financial difficulties from 2015 onwards, leading to several redundancies (including the redundancies of Mr Heslop and the Claimant's four children).

78. However, on balance I have concluded that the Claimant was engaged as a worker by the Respondent because the reasons set out above and my findings of fact demonstrate that the Claimant was not engaged by the Respondent as a self-employed individual.

***Unauthorised deductions claim***

***Was the claimant entitled to be paid her wages for the period 1 January 2019 – 27 April 2019?***

79. I find that the Claimant's contract with the Respondent continued up until 27 April 2019, when she regarded arrangements as having terminated. The Respondent did not take steps to terminate the contract at any time, including in December 2018 when Mr Heslop decided that the Respondent would no longer pay the Claimant.

80. As a result, I have concluded that the Claimant was entitled to be paid her wages for the period from 1 January to 27 April 2019.

***If there has been an unauthorised deduction from the wages of the claimant, what sum (if any) is claimant entitled to receive from the respondent?***

81. At the conclusion of this hearing, the parties agreed that the correct figure for any award for unauthorised deduction from wages to the Claimant was £10,400 (gross).

82. I therefore award the Claimant £10,400 gross (to be paid by the Respondent, subject to PAYE deductions) in relation to this under-payment of wages.

***Unfair dismissal and wrongful dismissal claims***

83. I do not need to determine these issues because I have found that the Claimant was not an employee of the Respondent.

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**Employment Judge Deeley  
9 December 2019**

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