EMPLOYMENT TRIBUNALS

Claimant: Mr Thomas Kamm

Respondent: Promohire Limited

Heard at: London South Tribunal **On:** 2nd June 2021 **by:** CVP

Before: Employment Judge Clarke (sitting alone)

Representation
Claimant: Mr Kamm (in person)
Respondent: Mr Gary Parker

WRITTEN REASONS

Introduction

1. By a claim presented to the employment tribunals on 28th September 2020 the Claimant brought a claim for £1,436.70 plus associated costs and compensation as a result of an unlawful deduction he says from his wages that he says he should been paid by the Respondent.

2. The Respondent failed to respond but judgment was not given under Rule 21 as the Claim raised issues about the Claimant's employment status. An open preliminary hearing was listed to determine the Claimant's status took place on 2nd June 2021.

3. At the conclusion of the preliminary hearing, an oral judgment and reasons were given. The Tribunal found that the Claimant was not a "worker" under s.230 of the Employment Rights Act 1996 and the Claim was dismissed. No request was made for written reasons but following promulgation of the judgment, the Claimant made a request for written reasons by e-mail dated 17th June 2021.

The Evidence

4. At the Hearing, the Claimant represented himself and gave sworn evidence. At the outset of the hearing the Claimant confirmed that was bringing his claim on the basis of an unlawful deduction from wages.

5. The Respondent was represented by Mr Gary Parker, a director of Racoon London Ltd, the Respondent being a non-trading company operated as a trading name of Racoon London Ltd.

6. Notwithstanding the Respondent's failure to file an ET3 response, the Respondent gave information as to the nature of the Respondent and I permitted Mr Parker to cross-examine the Claimant and make submissions.

7. Neither party had produced witness statements.

8. I was referred to, and considered, a number of documents, namely the ET1 and a bundle comprising 34 pages. Subsequent references in square brackets refer to the pages of this bundle. The bundle contains various correspondence between the Claimant and the Respondent both in the run up to his engagement and chasing payment, a number of receipts and an invoice [**32-33**] dated 10th July 2017 for £1,436.70, for which the claim is primarily made.

The Issues for the Tribunal

9. The issue to be determined in the hearing was the status of the Claimant and specifically whether he was a worker within the meaning of s.230 of the Employment Rights Act 1996.

10. The Claimant's ET1 indicated that his employment commenced on 20th October 2017 and ended on 18th September 2020. In fact, during the hearing the Claimant conceded that his engagement by the Respondent took place solely between 20th to 29th October 2017.

11. A secondary issue therefore arose as to whether the claim had been brought within time.

Relevant Findings of Fact

12. The Respondent is non-trading company operating as a trading name of Racoon London Ltd. It is essentially an agency providing promotional services for its clients. In 2017 it was engaged by Valspar paint to carry out promotion and marketing for their product range.

13. The Claimant has worked in the marketing and promotion business for over 15 years, representing various brands as a brand ambassador in a promotional field. He is registered as a self-employed sole trader, often operates as a self-employed individual taking work on a self-employed basis, and is registered for income tax and national insurance as a self-employed individual. The capacity in

which he is engaged however varies. Whilst he does undertake work as a self-employed individual, on some occasions he is directly employed by companies where the company did not wish to use an agency.

14. The Claimant was engaged to work for the Respondents for a discrete period between 20th and 29th October 2017 to carry out promotional work for Valspar paints. He had not worked for the Respondent directly before although he had previously worked for a company that the Respondent had used for a different campaign. He has also not worked for the Respondent subsequently. This was therefore a discrete engagement between 20th and 29th October 2017 which came about as follows.

15. The Claimant had been recommended for the job by a friend who was also working the same job. On 21st September 2017 the Claimant received an e-mail from Tom Sustins, Project Manager of the Respondent, asking if he was available to work on dates between Friday 20th October and Sunday 29th October and giving a breakdown of the location he would be required to be at on each of those dates [**5**]. Some of the dates were to be "live" dates where the Claimant would be promoting and other days were travelling dates where he would be moving between locations.

16. There then followed a series of other e-mails passing between Mr Sustins and the Claimant between 21st September 2017 to 20th October 2017 in respect of the job [**6 to 14**] during which further details of the job were sought and provided. The evidence I heard, and which I accept, was to the effect that the majority of arrangements regarding the Claimant's engagement are contained within the series of e-mails although I was also told and accept that there were a number of telephone calls between Claimant and Tom Sustins.

17. On 25th September 2017 the Claimant responded to the initial e-mail indicating he was available and enquiring as to the rates payable for the live days, travel days and the per diems (essentially an allowance for food to be purchased through the day). He also asked "Are you able to pay as self employed?" [**6**].

18. In response, Mr Sustins stated that live days were paid at £160 per day, travel days at £110 per day and per diems at £20 per day. In response to the request regarding payment as self-employed he stated "You would need to provide and (sic) invoice to us and we would pay that directly to your bank." The Claimant was asked to confirm that this was ok so that he could cancel other enquiries [**7**].

19. Further clarification was obtained that per diems applied to overnight stays and receipts for the per diems would be required and that although some travel expenses could be reclaimed, only certain (specified) train tickets would be paid in addition to the daily rates [**9-10**]. The Claimant then confirmed that he should be booked in for the full period [**12**].

20. Additionally, I was told by Claimant, and accept, that for part of this period he was required to be away from his home overnight and that the Respondent arranged the accommodation and booked it for him.

21. There is nothing else within the pre-engagement correspondence (oral or written) which touches on the mechanism by which this engagement would take place. As noted above, this was an engagement for a discrete period and the Claimant candidly told me that he was under no obligation to accept the work being offered and had previously been offered work with the company in the past which he had declined. Also, that the Respondent was under no obligation to the Claimant to offer him the work or any subsequent work.

22. The discussions that were undertaken either by e-mail and/or phone in advance of this period of work did not include any specific reference to terms of employment nor did they include any reference to what might be considered to be common provisions in an employment contract, such as entitlement to sick leave, holiday entitlement, or notice periods, nor was there any other documentation in writing which set out such details.

23. When asked about these matters the Claimant told me that this was a last-minute booking and that things like sick leave he rarely went into as he did not very often suffer from sickness and he fulfilled every job. When pressed he told me that had he become unwell and unable to work one of the days he assumed that the Respondent would have found someone else to cover. He could not tell me whether he expected to be paid if he was unable to attend due to sickness. He candidly told me that there was no pension involved in this engagement and he merely assumed holiday entitlement was built into the rates rather than being something he would accrue in course of this engagement.

24. In response to my enquiry as to whether he was provided with a disciplinary or grievance procedure, or would be subject to one, he indicated that he imagined so but that it was not something discussed in advance or which in fact arose.

25. When asked whether he was required to turn up personally or could substitute someone else competent to undertake the work he initially told me that he thought he could have substituted someone else before backtracking and saying that he did not think he could have.

26. I accept the Claimant's explanation as to what he was required to do as part of this engagement between 20-29th October 2017, namely that he was to visit B & Q stores around the country as part of a team and promote Valspar paint by raising awareness of their product range and giving demonstrations of the paint itself.

27. I accept that he was working with another individual engaged by the Respondent and that he was provided with all the materials that he would need to undertake this work including:

    (i) A branded vehicle to operate from which was kitted out so that individuals or families that they met at the B & Q stores could step inside the van to talk about the product and observe demonstrations;
    (ii) Paint samples;
    (iii) A uniform he was required to wear;

(iv) Various promotional materials that in his discretion he was able to give out to the members of the public with whom he was engaging; and
(v) A rough script that he was able to adapt in terms of what he should say to those members of the public he engaged with.

28. I find that the Claimant was not at liberty to decide which B & Q stores they visited or when those stores were visited but was given a schedule of dates and locations where he was supposed to be and times he was expected to be there in order to undertake this job promoting Valspar paint.

29. On the basis of the Claimant's evidence, I also find that he was expected to engage in a minimum number of 20 separate conversations with an individual or family on each of the days he was promoting the paint. He tells me, and I see no reason not to accept his evidence, that in order to ensure that he undertook those 20 conversations he had a tally sheet in the van which he used to record each engagement.

30. He was not continuously supervised during period 20-29th October 2017. On 2 separate occasions for parts of the day Mr Tom Sustins did attend his location, during which Mr Sustins took photographs and observed what was happening during the course of the promotion.

31. As anticipated by and agreed between the parties, following the conclusion of the engagement, the Claimant generated an invoice dated 10th November 2017 [**32-33**] and sent it to Mr Sustins for payment. The invoice totalled £1,436.70. The breakdown shows that he sought payment at the agreed rates for the work that he had undertaken plus per diems and travel expenses for the agreed journeys. Copies of the travel ticket receipts for the particular journeys to be re-imbursed and for food purchased during his engagement were also within the bundle [**22-31**].

32. No expected date for payment appears on the invoice but the Claimant advised me that he expected to be paid between 1-3 months after invoicing as this was a typical payment period in his industry.

33. The invoice was not however paid as expected and has not been paid to date. In January 2018 the Claimant went overseas in order to attend to a sick family member and did not return to the UK until June 2020. He was focussed on family whilst away and did not have documents with him so did not discover that he had not been paid or take steps to chase up the non-payment until his return to the UK.

34. After contacting the Respondent seeking payment, on 4th August 2020 he was advised in an e-mail from one of the Respondent's employees, Alyson Clark, that there was "…no-one involved with the job that can clarify/approve your invoice at this time. It is just so long ago.." [**15**].

35. Further correspondence between the Claimant and the Respondent did not result in payment and in an e-mail dated 4th August 2020 the Claimant asked "Is there no proof I worked this job?", and for clarification as what the issue with payment

was. He also stated "Whilst I would normally have followed up earlier, I have explained the exceptional circumstances for not being able to do so and legally speaking have 6 years in which to claim on an unpaid invoice" [**19-20**].

36. In a further e-mail to the Respondent dated 15th September 2020 the Claimant stated "Whilst it is my preference to avoid doing so, if no payment is made I'll be left no other option than to hand over the invoice to my accountancy firm who generally lodge unpaid invoices with a debt collection agency" [**21**].

37. At no stage during his contact with the Respondent seeking payment of his invoice did the Claimant assert that he had been an employee of the Respondent or that the invoice represented unpaid or unlawfully deducted wages.

38. Mr Parker confirmed, and I accept, that the Respondent had no record of the Claimant having been engaged as an employee.

39. The Claimant's reasons for believing that he was engaged as an employee rather than as a self-employed individual on this occasion are set out in 3 points in a 1 page document that he provided entitled "Employment capacity". This states:

> "For the avoidance of any doubt, the capacity in which I worked for this employer was as an employee, based on the following defining criteria:
> 1.I could be told what to do, as well as how, where and when to do it.
> 2.I worked for a business which was not my own and in which I was not a partner.
> 3.Between 20 -29 October 2017 inclusive, I worked as a promotional member of staff on a campaign for Promohire Ltd, representing Valspar paint. The travelling role included pre-approved travel and food expenses. I have a clear booking confirmation, in writing, from Promohire Ltd (Tom Sustins) stating the rate of pay and agreed food and travel amounts. These amounts were set in stone and decided by my employer."

40. Ultimately, he told me that the difference between this job in respect of which he claims he was an employee, and other jobs where he accepts that he was engaged on a self-employed basis, was to do with the provision of materials and the level of control which he had. He told me that on all occasions when he has been self-employed, he had been the one who had to source uniform from the manufacturers and have it branded, book his own hotels, arrange his own transport and provide whatever tools required for the job whereas in contrast for this job everything was arranged for him.

Relevant Law and Conclusions

41. By virtue of s.13 of the Employment Rights Act 1996 ("the 1996 Act") an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised or permitted (by virtue of a statutory provision or the worker's contract) or where the worker has previously signified in writing his agreement or consent to the deduction.

42. Section 23 of the 1996 Act gives a worker the right to complain to the Employment Tribunal in respect of any unauthorised deduction from wages. No qualifying period of service applies to the claim.

43. I must therefore determine the Claimant's employment status. Although he has claimed to be an employee, in fact he may bring a claim for an unlawful deduction from wages if he can be classified as a "worker" and it is therefore this wider classification that I must consider. To do so, I have to look at and characterise the nature of the contract formed between the Claimant and the Respondent.

44. The starting point is section 230(3) of the 1996 Act, which defines who classes as a worker. Under s. 230(3) a worker means an individual who has entered into or works under (or where the employment has ceases, 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 a client or customer of any profession or business undertaking carried on by the individual.

45. A contract of employment is defined in s230(2) as a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing.

46. In essence, in determining whether the Claimant was an employee, I must consider whether the agreement between the Claimant and the Respondent in this case was a Contract ***of*** service – in which case the Claimant would be an employee, or a contract ***for*** service, in which case the Claimant will be an independent contractor but may nevertheless be a worker under s.230(3)(b) of the 1996 Act as the definition of worker encompasses, but is wider than, those who are employed. However, the statute provides a limited amount of assistance in terms of determining what a contract of employment is or who falls within the category of worker.

47. Essentially, the decision as to whether or not someone is a worker is a question of fact and degree which the Tribunal must determine. There is no simple test or single checklist or exhaustive list of considerations that I must apply to do so although a line of cases from *Byrne Brothers (Formwork) Ltd -v- Baird & Oths 2002 ICR 6678, EAT* to *Uber BV & Oths -v- Aslam & Ors [2021] UKSC 5*, have provided guidance as to the factors to be considered.

48. In *Uber BV*, the Supreme Court emphasised that the determination of "worker" status was a question of statutory interpretation, not contractual interpretation and that the written agreement should not be used as a starting point. The Tribunal should begin with the purpose of the legislation, which is to give protection to vulnerable individuals who are in a subordinate and dependent position in relation to a person or organisation who exercises control.

49. I must consider all the circumstances but in particular I should consider 3 broad aspects which feed into an ultimate conclusion as to how the relationship between these 2 parties can be categorised. Those 3 essential broad aspects are:

    (1) control;

    (2) personal performance; and

    (3) mutuality of obligation.

50. Considering each of these in turn:

Control:

51. There was undoubtedly a significant level of control exercised by the Respondent in relation to the work that was undertaken by the Claimant. It is likely that the level of control derived from the specifications in the contract between the Respondent to their own client, Valspar.

52. I have found as a fact that in terms of the arrangements, the Respondent specified the dates, times, locations and nature of the activity. None of these specifications is unusual for, or inconsistent with, a contract with a self-employed individual (eg a barrister being instructed to appear at a particular court at a specified date and time).

53. However, the arrangements in this case went further than merely the Respondent specifying the dates, times and locations of the work, it also provided the necessary accommodation and all the equipment required to undertake the work. To some extent the Respondent also specified the manner in which the work was expected to be carried out, although there was also clearly a degree of autonomy and discretion given to the Claimant to give out promotional items and to depart from the script that he was given and to effectively promote in the way he might see fit (albeit guided by that script).

54. Further, although the Claimant was required to engage in 20 conversations per day, this requirement did not form part of the pre-agreement discussions about the engagement and very little in way of monitoring or supervision was undertaken to ensure that the work carried out in the way specified by the Respondent. Indeed, from the description given by the Claimant it is far from clear that any real monitoring or supervision took place. The Claimant did not suggest that anyone checked the tally sheets to determine whether or not the requisite number of conversations had taken place, Mr Sustins was not present the majority of the time, and when he did attend he was taking photographs. I gained no sense from the Claimant that Mr Sustins was actively monitoring or assessing the performance of the Claimant and the person he was working with.

55. Although the arrangements do indicate a degree of control and the degree of control was greater than that which the Claimant considered typical of his experience when self-employment, I do not find that the degree of control was such as to be definitive of the issue before me.

Personal Performance

56. It is trite law that an unfettered right to appoint a substitute without sanction will preclude the individual from being a worker - *Byrne Brothers (Formwork) Ltd -v- Baird & Oths 2002 ICR 6678, EAT* and *Community Dental Centres Ltd -v- Sultan-Darman 2010 IRLR 1024 EAT*. However, a limited or occasional power of delegation might not – *Ready Mixed Concrete (South East) Ltd -v- Minister of Pensions and National Insurance 1968 1 All ER 433, QBD*.

57. While there is developing case law in respect of the requirement for personal performance of a contract it is clear from cases such as *(1) Redrow Homes (Yorkshire) Ltd -v- Wright; (2) Redrow Homes (North West) Ltd -v- Robert & Oths 2004 ICR 1126, CA* that construction of the contract is critical in determining whether or not there is a right to substitute and that each case may turn on its facts.

58. In this case, nothing regarding substitution was expressly discussed either orally or in writing between the parties. Whilst I might have been persuaded by the nature and circumstances of the arrangements that the Respondent was likely to have had an expectation of personal service from the Claimant, it was also clear that the Claimant was merely one of a number of possible candidates for the engagement and the Claimant did not have a unique skill which meant that he and he alone could perform the work required [**7**].

59. Further, the Claimant's evidence was far from clear or compelling as to whether he was required to attend personally and undertake the work or whether he could provide a substitute. He initially suggested he might be able to substitute, then stated that he did not believe that he could put in a substitute even if they were competent and he did not think that the Respondent could substitute him for someone else either. Consequently, I did not find the evidence persuasive one way or the other as to whether there was any understanding between the parties as to whether the contract must be performed personally by the Claimant.

Mutuality of Obligation

60. The period for which he was engaged was a discrete period where he was working for the Respondent directly. He had not done so either before or after this particular period between 20-29th October 2017. There was therefore no series of engagements which might create a pattern and assist me to determine whether or not there was any mutuality of obligation.

61. The Claimant told me quite candidly that he was in no way obliged to accept these 10 days worth or work offered to him and indeed nor was the Respondent obliged to offer it to him. He also told me he had been offered work indirectly by them in the past and had declined. Based on this evidence I find that there was not any mutuality of obligation.

Overall Categorisation

62. I also considered the overall circumstances of the case in order to characterise the relationship between the Claimant and the Respondent.

63. For the reasons set out above, I cannot see that the Claimant was in any way of significance integrated into the business of the Respondent or, crucially, that there was any form of mutuality of obligation between the Claimant and the Respondent. This would mitigate against categorisation of him as an employee.

64. Nor did I consider, on the evidence before me, that the Claimant could be said to be a vulnerable individual who was in a subordinate and dependent position in relation to the Respondent. He appears to have had his own business accounts and accountant, had other clients, and was not dependent upon the Respondent for his livelihood but rather undertook a short, transient and discrete piece of work. The terms of the contract between the Claimant and the Respondent, such as they were, accurately reflected the reality of the arrangement between them

65. The above are hallmarks of a man running a business.

66. I particularly considered whether there was any entitlement to benefits which are exclusively available to either an employee or a worker, namely holiday or holiday pay, sickness pay, pension or other benefits, and whether there was any grievance or disciplinary procedure applicable to this engagement. I have concluded on the basis of the evidence before me, as set out in the findings of fact above, that there was not. None of these matters were explicitly discussed or included in any written description of terms of engagement and it was not clear to me that the Claimant himself considered that he was entitled to the benefits of a worker, such as paid holiday, sick pay, an occupational pension and minimum wage.

67. At best the Claimant's responses regarding his expectations concerning holiday and sickness pay and grievance and disciplinary procedures were equivocal. He assumed holiday entitlement or pay was included in the daily rate ie it was not something he expected to accrue and be paid for. Sickness pay was not in his view an issue. He was clear that apart from the various benefits that had been specified as parts of this engagement, namely the per diems, the daily rate of pay and the provision of the equipment and accommodation, there was nothing else expected or received and he had no expectation of pension payments.

68. I looked carefully at the agreed terms regarding pay.

69. The Claimant would be paid a varying flat fee for each of the days worked plus particular expenses. There is no evidence from which I can conclude, as the Claimant suggests that I should, that the amount of pay was set in stone by the Respondent. The evidence before me did not suggest any attempt was made to negotiate the rate of daily fees but there is evidence of a degree of negotiation over the per diems, in respect of which the Claimant appears to have been successful.

70. The Claimant was not to be paid on a PAYE basis but gross on presentation of an invoice, with the Claimant responsible for his own tax and national insurance. I remind myself that whilst the fact that the Claimant is registered for tax and national insurance as a self-employed individual might be relevant to whether or

not he could be classed as an employee, this is not generally a relevant consideration when determining whether someone is a worker. A proportion of those who are self-employed for common law and tax purposes will nevertheless acquire some statutory employment rights protection if they class as a "worker" and in a large number of cases, the individual casual worker will be paying tax and national insurance on a self-employed basis.

71. I considered the Claimant's own contemporaneous comments, which I found to be of primary importance in shedding light on the character of the arrangement between the parties.

72. In the early stages of contractual negotiation, the Claimant asked the Respondent if they were able to "pay as self-employed". There are a number of different ways that this could be interpreted.

73. The background context is that this request came from an individual who operates his own business as a self-employed individual in this field. Further, the Claimant told me that when he is employed it is by companies directly who don't want to go through an agency (the Respondent is an agency and the Claimant gave me no example of when he was engaged directly by an agency on a self-employed basis). It was also a query made in the context of a very short and discrete period of proposed engagement with no obligation on either side to offer or accept this work or any other work.

74. Additionally, this request was made at a time when the only details as to the job that were known to him were the dates and locations he would be required to work. There was no subsequent discussion as to those benefits which an employee or worker would be entitled to, such as sick pay, holiday pay, pension etc.

75. This strongly suggests to me that at the time that he undertook this particular engagement he expected to do so in his self-employed capacity, not as an employee (as he contends) or as a worker. I am not satisfied with his explanation that he was merely checking his understanding that he would be paid gross on presentation of an invoice.

76. My overriding impression of the Claimant's evidence was not that the Claimant himself had truly believed that he was employed at the time of the engagement. Rather, his shifting answers to my questions and the manner in which his case developed left me with the impression that he was tailoring his answers to reach the conclusion he wanted rather than giving me an entirely accurate account of what he contemporaneously understood or believed to be the case. I did not find him credible or believable in his assertion that he considered that he had been an employee.

77. Nevertheless, even if the Claimant was not an employee, I must still consider whether he was a worker under the second limb of s.230(3) of the 1996 Act so I particularly considered the provisions of s230(3)(b) and whether the Respondent's status was that of client or customer of the Claimant's profession or business undertaking.

78. In this case, on his own admission, the Claimant frequently operated as a self-employed individual carried on a business undertaking of the same nature as the work undertaken for the Respondent on his own account, entering into contracts with clients or customers to provide work or services for them.

79. Taking all of the factors that I have discussed above into consideration, I find that the Respondent status was that of client or customer of the Claimant's established profession or business undertaking. Accordingly, the Claimant was not a worker within the meaning of s.230 of the 1996 Act.

80. That I am correct in my assessment that the Claimant both understood himself to be, and in fact was, engaged by the Respondent as a self-employed individual is corroborated by the fact that in his subsequent correspondence with the Respondent in 2020 (when he pursues payment of his invoice) he neither asserted that he was an employee or worker of the Respondent nor suggested that he would make a claim to the Employment Tribunal if payment was not forthcoming. On the contrary, the references to the action he would take in the event of non-payment suggest that he intended to take action in the County Court for breach of contract, the only option available to a self-employed individual.

81. In conclusion, for the reasons set out above, I find that the Claimant was neither an employee nor a worker but was engaged as a self-employed individual. Consequently, the Claimant is not entitled bring a claim for an unlawful deductions from wages. His claim must be dismissed.

Jurisdiction

82. Even if I am wrong about the Claimant's employment status, and the Claimant was in fact a worker within the meaning of section 230 of the 1996 Act, I would in any event have had dismissed the claim as having been brought out of time.

83. Under section 23(2)(a) of the Employment Rights Act 1996, a claim for an unlawful deduction from wages must be brought within 3 months beginning with the date of the payment of wages from which the deduction was made (with an extension for early conciliation).

84. In this case, the work was undertaken in October 2017 and the Claimant invoiced the Respondent on 10th November 2017. He expected to be paid by no later than 10th February 2018. I find that this was the latest date that could be considered as the "date of the payment of wages from which the deduction was made" for the purposes of section 23(2)(a). His claim to the Tribunal was not however presented until 28th September 2020, some 2.5 years or so later. His claim was not therefore presented within 3 months and was out of time.

85. S.23(4) gives the Tribunal a discretion to extend the time limit in s.23(2)(a) for such further period as it considers reasonable where it is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the 3 month period in s.23(2).

86. The reason the Claimant gave for the delay was that he was absent from the country and without his documentation for the period January 2018 to June 2020 for the purposes of caring for a sick relative. No further details were given other than that this took up quite a bit of his time.

87. Whilst this might have accounted for a short delay in presentation of his claim, in an age of electronic communication, and in circumstances where the Claimant's own evidence made it clear that he has an accountant and communicates primarily by e-mail, I did not find this explanation to be either a compelling or convincing reason for the totality of the delay.

88. I am therefore not satisfied that it was not reasonably practicable for the Claimant to present his claim to the Tribunal sooner than 28th September 2020 and I would not have considered it appropriate to extend time to this date under section 23(4) of the Employment Rights Act 1996.

Employment Judge L Clarke
Date: **27th August 2021**

Judgment sent to the parties and entered in the Register on: **12th October 2021**

FOR THE TRIBUNAL OFFICE

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