



EMPLOYMENT TRIBUNALS

Claimant:
Mr W Donaghue

v

Respondent:
Steamin Billy (Oadby) Ltd

Heard at: Leicester (Hybrid CVP)

On: 8 & 9 August 2022

Before: Employment Judge Fredericks

Appearances

For the claimant: Mr C Johnstone (Senior Advocate)

For the respondent: Mrs J Duane (Counsel)

JUDGMENT ON PRELIMINARY ISSUE

1. The claimant's claims in respect of 'detrimental treatment and bullying and harassment as a result of association with someone who is disabled' are dismissed upon withdrawal.
2. The claimant was not at any time an employee or worker of the respondent.
3. Consequently, all of the claimant's remaining claims are dismissed because the tribunal has no jurisdiction to hear them.

WRITTEN REASONS

Introduction

1. This preliminary hearing was listed following a telephone case management discussion heard by me on 1 June 2022. It was initially listed for one day but was extended to two days by agreement of the parties to allow all of the relevant evidence

to be heard. These reasons are produced at the claimant's request following promulgation of my written judgment. I gave judgment with oral reasons on the second afternoon of the hearing.

2. The claimant initially brought a variety of claims, but those remaining live at start of the hearing were:
 - 2.1. Unfair dismissal;
 - 2.2. Breach of contract (including notice pay);
 - 2.3. Detrimental treatment and bullying and harassment as a result of association with someone who is disabled; and
 - 2.4. Redundancy payment.
3. To repeat the positions of the parties in respect of the claim from a previous case summary, the claimant claims that he was an employee of his former wife, Ms Lord, who was the licensee of a public house belonging to the respondent. He says that the respondent took control of the premises when it ended the agreement between it and Ms Lord, and that at this point he transferred into the respondent's employment by way of a TUPE transfer. The claims for unfair dismissal and redundancy payment are made following the respondent's treatment of him following his alleged transfer. During the course of the hearing, I note, the claimant's position altered slightly in that he began to allege that his employment should have transferred to the new 'Manchisee' rather than the respondent.
4. The respondent denies that the claimant was an employee and asserts that he was a self-employed contractor known internally as a 'Manchisee' operating a pub as a licensee. It says that the TUPE regulations did not apply. Additionally, the respondent avers that its relationship with the claimant was terminated in the manner provided by the agreement for services between the parties dated 26 October 2016. At the hearing, the respondent further argued that Ms Lord was not the 'Manchisee' and that the claimant was not employed by her.
5. The hearing took place through a hybrid format. The claimant and his representative attended in person in Leicester, where I sat each day. All other parties and witnesses dialled in remotely on the Cloud Video Platform.

Advocates and witnesses

6. The claimant was represented by Mr Johnstone, who operates as an employment tribunal advocate. The respondent was represented by Mrs Duane, of Counsel. During the course of the hearing, I had access to a bundle of documents running to 344 pages. Reference to page numbers in these reasons refer to page numbers in that bundle.
7. I heard evidence from the following witnesses for each of the parties:
 - 7.1. For the claimant –
 - 7.1.1. The claimant himself;
 - 7.1.2. Ms Lord, the claimant's former wife whom he says was his employer;
 - 7.1.3. Mr Rocky Leanders, former finance controller at the respondent; and
 - 7.1.4. Mr Leighton Turner, former operations manager at the respondent.

7.2. For the respondent –

- 7.2.1. Mr William Allingham, the managing director and founder of the respondent;
- 7.2.2. Mr Christian Roberts, the operations manager of the respondent; and
- 7.2.3. Ms Rebecca Davis, the financial controller of the respondent.

8. I found the presentation of the witness evidence supporting the claimant's case to be unusual. Upon joining the CVP, Mr Leanders did not know the name of the claimant whose case it was said he would be supporting. I am unclear how Mr Leanders could have prepared and authorised the witness statement and its contents put in on his behalf without knowing this information. Despite this reservation, I treated Mr Leanders' evidence as I would any other witness.
9. Mr Johnstone also presented me with several versions of witness statements, some of which were signed but not formatted and some of which were unsigned but were formatted. In respect of Mr Leanders' statement, I was given signed and unsigned versions of the statement, which were different to each other. The signed version contained the sentence: *"I am not an employment lawyer and would not presume to give inclination in any such capacity and can only state for the record that it is my understanding, via Christopher Sowman of Kenneth Law Sowman and Co, that Mr Donaghue was an employee of Mrs Lord"*. The unsigned version did not have this sentence in it. The signed version contained a header in square brackets which read: *"[standard mantra template to be inserted after final proof by CJ]"*, and was clearly not initially intended to be a final form document.
10. Mr Johnstone was not aware of the discrepancy and advised me to adopt the versions of the statements which were signed by the relevant witness. I was content to do this, although I should note that some of those versions did not contain paragraph numbers and so in cross examination Mrs Duane referred to the statements which did have paragraph numbers on.
11. I was unsure that the final witness statement signed by Ms Lord was intended to be the filed version, either. The signed copy given to me, which was adopted, had paragraph 5 in a different font and a similar note for a *"final declaration mantra to be inserted by CJ"*. Clearing up these points took some time at the outset of the hearing.
12. Ultimately, the written statements from Ms Lord, Mr Leanders and Mr Turner were incredibly short and lacking in any discernible detail. I do not consider that the respondent or Mrs Duane were prejudiced in any way by confusion about versions of the statements because, naturally, the evidence of those witnesses needed to be extracted in cross examination in order for the detail to be understood. I am grateful for the patience of those witnesses during my questions where I was seeking clarification on the points raised in their statements and what their evidence was on the salient points. Generally, I took the witness statements from the claimant's witnesses as evidence in chief, although I am conscious that they contain many bald assertions in language particular to Mr Johnstone and so I treat those parts with some caution where the witnesses did not confirm those statements in cross examination.

Other preliminary and procedural points

13. Mr Johnstone advised at the outset of the hearing that the claimant was withdrawing his claim in relation to detrimental treatment following association with a disabled person. Mrs Duane offered no objection to the withdrawal, although she did note that the respondent had been put to cost in preparing to deal with it. I confirmed that that head of claim would be dismissed upon withdrawal.
14. It was clear from the file that the litigation between the parties has been heated. Most of the correspondence was not relevant to the matters before the hearing, save that there were several applications for strike out made by the claimant which had not been determined by the outset of the hearing. It is apparent from the responses by the judges receiving those applications that there was some uncertainty about the grounds upon which they were being advanced. Each of the applications had been opposed in writing by the respondent's solicitors. Mr Johnstone confirmed that all outstanding applications to strike out the respondent's case were to be withdrawn at the outset of the hearing. Mrs Duane reserved the respondent's position on costs in relation to dealing with the strike out applications and other correspondence on the tribunal file.
15. Mrs Duane then made an application to strike out the claim at the outset of the hearing on the basis that there could have been no TUPE transfer on the claimant's own case because, even if the claimant was employed by Ms Lord, Ms Lord was a self employed subcontractor and therefore none of hers or the claimant's employments (if any) could have been caught by the TUPE regulations and transferred to the respondent. I considered that there were relevant matters which were disputed between the parties and which should be tested in evidence. In my view, it would be premature to strike out the claim on the first morning without hearing the evidence. Given that the parties were present and prepared to deal with the case over two days, it was, in my judgment, more proportionate to use that time for the parties to put their respective cases to me. I refused the application.
16. Mrs Duane's application, though, did highlight the absence of detailed pleading around the claimant's claimed TUPE transfer. On 21 July 2022, the tribunal ordered the claimant to provide the respondent with the dates that he says he was employed by his wife, and the date upon which his TUPE transfer to the respondent allegedly took place. The claimant did not comply with this order and so the matter remained outstanding at the outset of the hearing.
17. The claimant's pleadings state, in relation to TUPE: *"He shall put to proof by way of Legal precedence that he is and employee weather implied and or absorbed through the migration of business pertaining to the T.U.P.E Act 2006"*. It was then said, broadly, that the claimant understood that the public house would be closed down only to discover that it would in fact be passed to someone else to run. The pleading in relation to TUPE closed with *"this left the claimant in no man's land and it is presented in a Respectful manner to the Court that a series of events which followed on behalf of R1 R2 and R3 were both in contravention of statutory Law in addition to contravention of T.U.P.E Regulations 2006, and even extraordinarily stretched into contravention of Criminal Law under the Criminal Justice Act"*.

18. In the ensuing discussion, Mr Johnstone advised that the claimant's case is that he was employed by his wife from August 2016 to the end of 19 December 2021 and that his transfer to the respondent took place from the start of 20 December 2021. He says he was dismissed from this employment almost immediately when being asked to vacate the premises.
19. Finally, I should record that the claimant's witnesses appeared not to have been furnished with a copy of the hearing bundle prior to the start of the hearing. There was, therefore, an adjournment of around an hour on the first morning of the hearing to allow bundles to be provided to those witnesses in order that they could answer questions about the evidence they had given in their witness statements.

Issue to be determined

20. The open preliminary hearing was listed to determine the following issues:
- 20.1. *Was the claimant (1) an employee of his wife, (2) a worker for his wife, or (3) neither an employee or a worker, but a self-employed contractor?*
 - 20.2. *If the claimant was an employee of his wife, did his employment transfer to the respondent by way of a TUPE transfer?*
 - 20.3. *Was the claimant ever employed by the respondent?*
 - 20.4. *Do any of the claimant's claims against the respondent survive the determination of issues (a), (b) and (c) above?*
 - 20.5. *What, if any, case management orders should be made to prepare for a final hearing?*
21. These issues had been modified slightly by the start of the hearing. The claimant did not seek at any point to argue that he was a worker of the respondent, although I have considered the point in reaching my decision because of the requirement upon me to make a factual finding about the claimant's employment status.

Findings of fact

22. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. These facts are found on the balance of probabilities which means, after consideration of the evidence provided in the bundle and the hearing, they are found on the basis that they are more likely than not to have occurred in the way I set out below.
23. On 27 January 2016, the claimant e-mailed Mr Allingham of the respondent asking him to sponsor an event that the claimant was organising. After making his pitch, he signed off this e-mail with "*PS. I still live in hope that I can run a Billy pub*" (pages 52-53). This led to a conversation about the claimant working in or running a pub. On 24 May 2016, Mr Turner (who was at that point the operations manager at the respondent) e-mailed the claimant (page 54) to ask him if he could (1) do a couple of shifts at the Dog & Gun to get a feel for the pub, and (2) compile a business proposal about how the claimant could increase trade at the Dog & Gun. Mr Turner

also advised the claimant that the position of Manchisee was a 'live in' position and that a personal licence was required together with registration as a business and employer. The claimant is also informed that he would be presented with a contract when he came to do a shift at the Dog & Gun.

Set up of the disputed franchise at the Dog & Gun

24. On 1 August 2016, an internal e-mail at the respondent about marketing material discussed the landlord of the Dog & Gun (page 55). In that e-mail, the claimant is described as *"the new landlord"*. Mr Allingham was copied into that e-mail. A personal licence to sell alcohol was granted to the claimant by Blaby District Council from 5 August 2016 (page 35). The claimant was named the 'designated premises supervisor' at the Dog & Gun on the premises licence issued by Charnwood Borough Council on 31 August 2016 (pages 36-38).
25. There is a conflict in the evidence from the parties about the initial engagement in relation to running the Dog & Gun. The claimant says that Ms Lord assumed the role of the Manchisee in practice. This view is supported by: (1) Mr Leanders, who was at the time the financial controller of the respondent, (2) Ms Lord herself, (3) Mr Turner, who was at the time the operations manager at the respondent, and (4) correspondence from Ms Lord's accountant Mr Sowman. The respondent says that the claimant was always the Manchisee. This view is supported by (1) Mr Allingham, (2) Mr Roberts, who took over from Mr Turner, and (3) Ms Davies, although she was not working at the respondent during this initial period.
26. During the setting up of arrangements between the parties, Ms Lord was nominated to be the contact on the respondent's system for the purposes of payment of monies due to the Manchisee at the Dog & Gun. In his witness statement, Mr Leanders said that he, as the financial controller, *"instructed Ms Lord to migrate the title and position of Manchisee to herself in both title and responsibility"*. On 2 August 2016, he e-mailed Ms Lord (page 248) to advise that she had completed the paperwork well. He then said: *"Just a quick one on the Manchisee page – please change the name to you (from Richard) and select VAT Registered "No"."* The claimant explained that, on his case, he was intended to be the Manchisee but that this got altered very quickly. He considered that he became employed by Ms Lord in around July 2016 and began to receive PAYE payments with other Dog & Gun staff from Ms Lord in August 2016. Mr Turner agreed with this view, and added that he was informed by 'the officers' that Ms Lord would be the Manchisee. He said he then confirmed this with the 'company accountant'. I pause here to note that, of the cast list in this case, only Mr Allingham has been (and still is) listed as a director of the respondent.
27. Ms Lord's accountant, Mr Sowman, did not give evidence in the hearing for fear of a conflict of interest with the respondent, whom he also acted for. However, in an e-mail dated 23 February 2022, he expressed the view that Ms Lord must have been the Manchisee as this accorded with his understanding and explained why the monies due under the contract were paid to his firm and then into Ms Lord's bank account (pages 188-189). Plainly, the weight I am able to give his evidence in terms of why he thought this to be the case is limited by his lack of attendance. However, the point he makes about the mechanism of payment, together with the e-mails where he is discussing tax matters and chasing the respondent for matters pertaining to Ms Lord during the operation of the franchise (pages 56, 80, 94, 96, 113, 147-148,

155-156) does support the contention that (1) he understood Ms Lord to be the Manchisee, and more importantly (2) that Ms Lord was registered with the respondent as the person receiving payments in respect of the Dog & Gun and who did receive payments in respect of the Dog & Gun. In the absence of sworn witness evidence from Mr Sowman, I do not consider that I can draw any other factual findings on the basis of the contents of e-mails he wrote when prompted some years after the relevant time for this issue. I could not, for example, test whether his understanding was well founded or reasonable.

28. The respondent says that any payment of monies to Ms Lord does not mean that she was the Manchisee and relies on there being no written confirmation of that appointment as well as correspondence between the parties at the relevant period. It says, and I accept, that the claimant provided Ms Lord's bank details when giving details for the account to which payments under the agreement were to be made. All of the respondent's witnesses explained that the decision about appointing a Manchisee would be authorised by Mr Allingham and that any change to the Manchisee would also need to be authorised by Mr Allingham. Mr Leanders confirmed this, too, and his live evidence did not cover any occasion upon which Mr Allingham appointed Ms Lord as the Manchisee. Mr Allingham says he considered the claimant to be the Manchisee.
29. Under cross examination, Mr Allingham accepted it was possible that others in the organisation might be mistaken, but he was clear that he and everyone in post from late 2016 considered the claimant to be the Manchisee and treated him that way. Nothing put to the respondent witnesses in cross examination dislodged this point of view, despite Mr Johnstone's persistent questioning and occasional inflammatory response to the answers given. I am satisfied that, as a matter of fact, Mr Allingham was the person at the respondent who decided or authorised the appointment of manchisees. Mr Allingham is sure that he never authorised Ms Lord to be the manchisee. He says that he authorised the claimant becoming the manchisee. I can discern no reason, on the balance of probabilities, not to take this point at face value, but, before drawing a firm conclusion on the point, I should consider the other relevant facts.
30. By October 2016, the respondent had recognised that it needed to formalise the granting of the Dog & Gun franchise to support, I was told, the naming of the claimant on the alcohol licence and as the designated premises supervisor. On 18 October 2016, the claimant e-mailed Mr Allingham with the title "*progression*" to advise that he was available for a meeting (page 57). A day later, the claimant accepted an invitation to a meeting bearing the title "*Meeting – Bill Donaghue*" and which had the note "*Need signed agreement, check with sowman all hmrc up to date, QPP results from Cindy*" (page 58). The meeting was to take place on 20 October 2016.
31. On 26 October 2016, the claimant signed an agreement described as "*Agreement for services (agreement) for self-employed licensee/Manchisee*". The agreement was said to be between the claimant and the respondent (defined as the hirer). The claimant was named as the licensee/Manchisee. There is no version presented signed by the respondent. A copy of the agreement is at pages 39-44. For the purposes of this dispute, the most relevant terms of the agreement are:-

- 31.1. Clause 2.1 – *“The effective date of this agreement is the day of..... 2016”* (with no date inserted);
- 31.2. Clause 3.1 – *“The licensee/Manchisee is placed by the hirer as the self-employed licensee/Manchisee at On the terms and conditions set out in this agreement”* (with no premises address inserted);
- 31.3. Clause 3.4 – *“The hirer is not obliged to supply the licensee/Manchisee with work”*
- 31.4. Clause 3.5 – *“Equally, the licensee/Manchisee is not obliged to accept an assignment and is free to agreement to other organisations. A refusal of work will not preclude the licensee being offered further assignments”*;
- 31.5. Clause 4 generally sets out the payment terms for payments due to the licensee/Manchisee. The wording used is that *“the hirer shall pay to the licensee/Manchisee...”*;
- 31.6. Clause 4.3 – *“The gross pay percentage indicated above is inclusive of all staff wages;*
- 31.7. Clause 4.4 – *“The amount is paid in gross terms as the licensee/Manchisee, being self-employed, is responsible for declaring to the appropriate authorities the fees paid in order that the required tax and national insurance contributions can be calculated and applied”*
- 31.8. Clause 5 – *“The licensee/Manchisee is free to employ and pay his own staff as he sees fit..”*
- 31.9. Clause 8.1 – *“The licensee/Manchisee is required to work as many hours necessary in order to ensure the efficient operation of the business”*;
- 31.10. Clause 8.2 – *“As this engagement is self-employed status, the Working Ties Regulations 1998 do not apply”*;
- 31.11. Clause 9.1 – *“The notice period is four weeks, served in writing by either the hirer or the licensee/Manchisee;*
- 31.12. Clause 13.1 – *“The licensee/Manchisee shall unless notified to the contrary by the company occupy the living accommodation (where available) free of charge....”*;
- 31.13. Clause 13.1.1 – *“The licensee/Manchisee only has temporary license to occupy the living accommodation whilst engaged under this agreement for services;*
- 31.14. Clause 16.1 – *“I have read and thoroughly understand my rights and obligations as expressed in this agreement for services and accept the expressed terms and conditions referred to and acknowledge receipt of a copy of this agreement”*.

Correspondence with the claimant after the signing of the agreement

32. On 27 February 2017, the claimant e-mailed the respondent to advise that he would be on holiday for a week and that his daughter Shelby would be moving into the flat to take responsibility for the business. He said she would need help with some areas and advised that he would not be able to do the stock take on the Monday. The e-mail is from the Dog & Gun's e-mail account but is signed from "Bill D" (page 59).
33. On 30 March 2017, Mr Roberts e-mails the Dog & Gun's e-mail account to outline a discussion held earlier in the day. The e-mail is addressed to "Bill" and contains advice about initiatives to grow the business. It includes the line "remember we are here to support you to help and support you and make sure Business grow" (page 60).
34. On 23 April 2017, in a conversation about how to care for table tops in the premises, an e-mail was sent from the Dog & Gun account to the respondent which was signed off "Anita and Bill" (page 61). On 19 May 2017, Mr Roberts e-mailed the Dog & Gun account to report that a complaint had been received about noise. The e-mail was addressed to "Bill". Ms Lord replied on 21 May 2017 and referred to the living area at the premises as 'our' as if it belonged to both her and the claimant. It is clear to me that Ms Lord was living at the premises at this time.
35. On 3 August 2017, the claimant e-mailed the respondent to discuss an application for holiday cover (page 66). It is clear from the e-mail, signed from "Bill D" that the cover was for the claimant's absence and that he had made the application. A similar e-mail, signed "Bill" appears from 24 September 2017 (page 68).
36. On 22 November 2017, Mr Roberts e-mailed the Dog & Gun e-mail address with the September accounts (page 69). The e-mail begins with "Hi Bill". There are similar e-mails, beginning the same way, from 17 January 2018 at page 76, 27 February 2018 at page 81, 12 November 2018 at page 97, 28 January 2019 at page 99, 6 March 2019 at page 107, 16 July 2019 at page 116 (to which the claimant replied), 9 September 2019 (page 123). I am satisfied from all of the evidence that the respondent addressed all initial e-mails relating to Manchisee matters to the claimant at that address, and not to Ms Lord. It is also clear that Mr Roberts' confidence in the claimant to open and read, or to understand, the documents was waning as time went by. On 16 July 2019, Mr Roberts said "I'm sure you will not even open this but here goes". On 9 September 2019, Mr Roberts said "if you would like to go through this so you have a better understanding of it then please let me know".
37. On 23 January 2018, the claimant sent an e-mail to Mr Roberts which reads (page 79): –

"Morning

Just a reminder I asked in Dec for a meeting regarding manchisee payment and also I'd like some better tables from Oakham if possible pref the long thin ones.

Thanks Bill

Mr Donaghue"

38. Under cross examination, the claimant alleged that this e-mail was sent under the instruction of Ms Lord who was the person with the query. He could not explain what the matter was about or why there is no record of Ms Lord asking questions about this franchisee payment. It is possible, in my view, that the query was relating to a tax query. I am satisfied from the parties' evidence that Ms Lord was responsible for ensuring financial affairs were dealt with at the Dog & Gun. Page 80 shows an e-mail exchange between Ms Lord and Mr Sowman about how she should structure her tax payments to avoid penalties.
39. On 12 March 2018, the claimant emailed Mr Roberts to ask for (1) an electrician to attend the site, (2) a budget to decorate the premises, and (3) clarification about whether staffing costs can be covered for his planned holiday. The e-mail is signed "Bill" (pages 86-87). Mr Roberts replied on the same day (page 86), and in the e-mail also adds "*I am still awaiting some fates from you to go out and see some pubs to get some ideas together*". On 17 March 2018, Mr Roberts e-mailed (page 88):

"Hi Bill

I can confirm that we will pay £300 towards your holiday cover for your holiday in April.

Enjoy your holiday".

40. At around the same time, the respondent was organising a trip to Spain between 22 and 24 May 2018. The proposed attendee list is at page 90 and contains the claimant's name. The respondent witnesses say that this was a trip for franchisees and that the claimant was on the list because he was a franchisee. In the latest e-mail in the attaching chain, on 20 March 2018 (page 89), Ms Anderson of the respondent commented that "*we have one franchisee not attending*" and "*Please let me know as soon as possible so we can advise the franchisees of timings etc*". I am satisfied that this trip was intended to be a trip for franchisees. The claimant notes that one name on the list was not a franchisee. As an explanation, Ms Davis explained that that person was treated as a joint franchisee with their partner, who held the franchise agreement and who was subject to the notice provisions in that agreement. Ms Davies denied that Ms Lord could be a joint franchisee.
41. On 1 April 2018, the claimant was struggling to complete a stock take at the Dog & Gun and sought advice about how to deal with it, signing his e-mail "Bill" (pages 91 to 93).
42. After this, in an undated letter produced at page 95, Ms Davis wrote a letter to the claimant (beginning "*Dear Bill*") to thank him for the work in making the respondent successful in the 2017/2018 financial year, and that the respondent was in a position to pay bonuses. The claimant is told :-
- "Your unit's profit was £52,519 and the bonus amount will be £5,251.94. Please can you arrange an invoice to us for this amount..."*
43. There is no response from the claimant to the above pointing out any mistake with the person described as owning or managing the business unit. The claimant did not dispute that this letter was sent to him or that that was the amount paid as a bonus

through Mr Sowman into Ms Lord's bank account. The same pattern is shown in the following financial year when the claimant is told he would be paid £5,728.27 as a bonus for the unit he was responsible for (page 115).

44. On 2 August 2019, a member of the public made a complaint to the respondent about the 'current landlord' of the Dog & Gun (page 118). The landlord is referred to as a 'he' and raises an issue that the Dog & Gun is using public land for benches for patrons to use whilst at the premises. Mr Allingham forwarded this to the Dog & Gun e-mail address and the claimant replies (signed "*Bill*") saying that he had challenged the member of the public about it. He also described the member of public as a 'melt' who "*chases poko mon, and likes being in the presence of young children*". From this response, I am satisfied that the claimant engaged with the member of the public and did not at any point note that he was not the landlord or franchise owner of the Dog & Gun.
45. On 10 August 2019, Ms Davis was on site at the Dog & Gun when the claimant met with a member of staff called Andy, who Ms Davis notes his the claimant's cleaner in her note of the meeting (page 120). One of the notes Ms Davis makes is that "*Bill as employer not at fault*". In cross examination, the claimant noted that these were not his notes and that he may not have held himself out as the employer as he was, on his case, Ms Lord's employee. For the purposes of fact finding, I am satisfied from this evidence that Ms Davis understood on that day and in that meeting that the claimant was the employer of the cleaning staff he was speaking to.
46. On 14 October 2019, Mr Roberts e-mailed the claimant another set of P&L accounts (page 127), beginning "*Hi Bill*". There was a reply from the Dog & Gun e-mail account asking for clarification. I am satisfied from the tone of the e-mail and the way in which it is written that the claimant wrote that e-mail even though it is not signed. Mr Roberts responds with a long explanation of the documents (pages 126-127), to which the claimant responds simply "*3 years*". From this exchange, I consider that the claimant had been sent these documents for three years but had finally been given some written explanation of them. Consequently, I find that the claimant had been sent the manchisee P&L information since he had signed the agreement for services and that he had known that he should consider and understand them.
47. On 12 February 2020, the claimant sent Ms Davis and Mr Roberts an e-mail bearing the title 'Manchisee payment'. The e-mail reads (my underline emphasis):-

"Good afternoon Rebecca

Following on from our conversation earlier regarding the agreement from Christian to increase my manchisee from 17% to 18% upon the Gin Bar opening, could you please look into this for me.

I have copied Christian into this email as advised.

Kind regards

Bill

48. In cross examination, the claimant attempted to explain this e-mail away as being done on the instructions of Ms Lord in respect of the Manchisee payment which belonged to her. Respectfully, the claimant did not persuade me in the slightest that that was the case. He could offer no explanation about why the e-mail was phrased in this way, nor could he explain why there was no record of being told by Ms Lord to do this request even though his original response essentially asserted that Ms Lord had advised him remotely to send the e-mail. In my view, the claimant sent this e-mail on his own account, following his own conversation with Ms Davis, about a Manchisee payment that he considered was his own. It is also apparent that the earlier conversation had involved the respondent dealing with the claimant as though he were the Manchisee. I am more confident to draw this finding of fact given the number of correspondences that the claimant had received by this point which indicate that the respondent understood him to be the Manchisee – none of which prompted him to assert that he was not the Manchisee, but that Ms Lord was.
49. It appears that the respondent agreed to pay the additional 1% requested. On 31 March 2020, Ms Davis e-mailed the Dog & Gun e-mail account to advise that a payment to reflect the 1% had been made. That e-mail (page 143) was addressed to “*Hi Bill/Anita*”.

Correspondence with Ms Lord after the signing of the contract

50. On 24 April 2018, Mr Sowman e-mailed Ms Davis (page 94) to ask for the purchase ledger accounts for a list of individuals including Ms Lord. There is another similar e-mail from Mr Sowman to Ms Davis from 24 April 2019 (page 113). It is clear that Mr Sowman was at this acting for a number of individuals who were running pubs owned by the respondent. Mr Sowman sent a similar e-mail on 9 October 2018 chasing for copies of Aquila accounts for a similar list of individuals as previously, including for Ms Lord (page 96).
51. It is clear that payments due to the Manchisee under the disputed agreement were made to Mr Sowman’s firm and then paid to Ms Lord. Pages 193 to 212 show payments made through that channel in respect of the Dog & Gun, with the first payment made on or around 8 July 2016 and the final payment made on or around 12 December 2021. The respondent also communicated with Ms Lord about those payments (page 249) and about administrative tasks such as stocktakes (page 252).
52. As outlined above, I am also satisfied that Ms Lord completed the relevant paperwork for the Dog & Gun. There was a general acceptance in the hearing that paperwork and accounts were not the claimant’s forte, and so I consider that e-mails such as that between Mr Leanders and Ms Lord dated 2 August 2016 (page 248) to be good evidence that Ms Lord stepped into that gap where appropriate.
53. On 27 March 2020, Ms Lord acknowledges that the manchisee payments are not due to her under the agreement, when she refers to them as belonging to “us” (ie. her and the claimant) (page 253). This is in response to an e-mail from the respondent to manchisees discussing support to be offered during Covid restrictions. It is clear from the correspondence that Ms Lord dealt with the paperwork side of the business, including investigating various support available during the pandemic (page 255 to 257; page 260 to 262).

54. From the summer of 2021, the claimant's daughter Tyra begins to correspond with the respondent by e-mail at around the point that e-mails from Ms Lord are no longer shown in the bundle (pages 266 to 276). I find as a fact that Tyra began to assist the claimant at the premises by performing the functions previously completed by Ms Lord after her relationship with the claimant broke down and she left the premises.

Termination of the agreement and actions of the parties

55. Mr Allingham describes issues emerging in 2021 in relation to the claimant's conduct and attitude towards Covid-19 measures. On 26 October 2021, the claimant and Mr Allingham met to discuss the franchise at the Dog & Gun. On 15 November 2021, Mr Johnstone for the claimant wrote to the respondent and asserted that the claimant was an employee of the respondent. Written notice to terminate the agreement was served on the claimant on 17 November 2021 with the agreement coming to an end on 19 December 2021.

56. The claimant did not vacate the premises upon termination. Ms Lord was adamant in her evidence that she dismissed the claimant and the other employees prior to the expiry of the agreement, saying in her evidence that she was unable to employ anyone without the income from the Dog & Gun. She was asked for clarity about this, and whether she considered the claimant's employment had come to an end. She said twice that she had dismissed the claimant and processed his P45. Given the potential significance of this, I asked for clarification. Ms Lord was very articulate that she had dismissed the claimant and prepared his P45. In closing submissions, Mr Johnstone urged me to ignore that evidence, suggesting that Ms Lord was mistaken. I do not consider that I can do that given Ms Lord's clarity. I therefore find that Ms Lord ended the claimant's PAYE arrangement prior to 19 December 2021 and submitted the claimant's P45 thereafter.

57. On 30 December 2021, the respondent removed the claimant as the DPS in an effort to regain control of the Dog & Gun. On 10 January 2022, Ms Lord wrote to the respondent to ask why she had not received payment in respect of the franchise as expected for the two weeks over Christmas and New Year. She asserted that she was the Manchisee and had received no notification that the contract had been terminated or that money would not be paid (page 264 to 265). Ms Davis responded on 11 January 2022 to say that Ms Lord was mistaken and that the claimant was the Manchisee (page 264).

58. The respondent issued County Court proceedings against the claimant to remove him from the premises. At a court hearing on 7 April 2022, District Judge Asjad ordered the claimant to vacate the premises and to pay the respondent's costs. The note of the hearing provided by respondent's counsel (pages 325 to 326) was not contested by the claimant. It is apparent from that note that the claimant asserted that he was not a party to the franchise agreement because he had not received a signed copy. He also asserted that Ms Lord was the correct Manchisee. The District Judge found against the claimant on these points and held that the claimant was a party to the franchise agreement.

59. On 20 April 2022, the claimant left the Dog & Gun and the respondent was able to regain possession of it. I accept Mr Allingham's account that no trading was done at

the premises from January 2022 until 17 May 2022 (supported by the documents at pages 214 to 216). This is supported by the claimant's witness evidence, where he says "*I was instructed to cease trading and I did*".

60. Given that (1) the licence was terminated in December 2021, (2) the arrangement between the claimant and Ms Lord was terminated around the same time, (3) the respondent had no sales recorded from January 2022 to 17 May 2022, and (4) the claimant says he ceased trading, I find as a fact that there was no business activity at the premises in 2022 until the new franchise owner took over the Dog & Gun. The contract between the new franchise owner and the respondent is said to have the effective date 16 May 2022. This means that there was an almost six month period where there was no business activity at the Dog & Gun.

Relevant law

Unfair dismissal claim

61. Section 98 Employment Rights Act 1996 requires that a person bringing a claim for unfair dismissal is employed by the respondent to the litigation. There are very limited exceptions relating to rights to accompaniment at certain hearings and meetings, but they do not apply here. To succeed in an unfair dismissal claim, the claimant must show that he was an employee of the respondent.

Worker status

62. The starting point in relation to considering the employment status of an individual is to consider the wording of the relevant statute. Section 230(1) to Section 230(3) Employment Rights Act 1996 provides:

"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" (except in the phrases "shop worker" and "betting 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 a client or customer of any profession or business undertaking carried on by the individual;”

63. There is no single test concerning how to determine a person’s employment status. Each case falls to be determined on its own particular facts and often there are factors pointing in each direction which complicate the determination. The usual approach requires all aspects of the relationship to be considered and then I should ask the question whether the claimant was carrying on a business on their own account (*O’Kelly v Trusthouse Forte plc [1983] IRLR 369 CA*).
64. Naturally, this means that the wording in any document and the assumptions made by the parties will only be part of the matters to be considered when making a determination. The test is not ‘what was the claimant called’ or ‘what do the documents label the parties’ or ‘what did the claimant think they were’. I may be required to look behind the contractual documentation to consider how the relationship operated in reality to determine the employment status of the claimant (*Autoclenz Ltd v Belcher [2011] UKSC 41*; *Uber BV v Aslam & others [2019] UKSC 29*).
65. In relation to whether someone is an ‘employee’ for the purposes of s230(1)(a), case law has found that a person will not be an employee without the mutual contractual obligation for the employer to provide work and the employee to do that work which is provided (*Carmichael v National Power Plc [1999] IRLR 43, HL*). This is often referred to in cases as the ‘irreducible minimum of obligation’. Employees who have a contract of employment containing the irreducible minimum of obligation will also be ‘workers’ by operation of s230(3)(a). Such workers are often referred to in cases as ‘limb (a) workers’.
66. A person might however be a ‘worker’ even in the absence of such an irreducible minimum of obligation – the obligations on each party is just part of the discussion about whether someone might be a ‘worker’ (*National Midwifery Council v Somerville [2022] EWCA Civ 229*). These workers may be caught by the definition outlined in s230(3)(b), and are often known in cases as ‘limb (b) workers’. Where I find that a person is not an employee, it is possible that they could be a ‘limb (b) worker’ if they meet the relevant requirements.
67. Those requirements are set out in the legislation itself: (1) there is a contract between the individual and the employer; (2) the individual must be required to work personally for the employer; and (3) the individual must not be working for someone who is in reality their customer or client. This last part is important because it is common for people to provide services under a contract to customers or clients without them benefitting from the protections offered by a ‘worker’ status. If all three elements are present, then it does not matter if the person is operating their own business (*Hospital Medical Group Ltd v Westwood [2012] IRLR 834 CA*).
68. Part (1) of the legislation is self-explanatory. In the usual way, the contract may be written or may be found to have been agreed orally with terms found through the conduct of the parties. Part (2) requires the contract to not allow the person claiming to be a worker the ability to substitute with someone else who would complete the work. An employer-worker relationship is a personal one. If there is a right of substitution, then it tends towards the person not being a limb (b) worker. If that right

of substitution is in reality forbidden or excessively curtailed in some way, then it is possible that the person might still be found to be a worker (*Pimlico Plumbers and another v Smith* [2018] UKSC 29).

Transfers under TUPE

69. The *Transfer of Undertakings (Protection of Employment) Regulations 2006* (“TUPE Regs”) sets out protections afforded to employees upon a relevant transfer. *Regulation 3* sets out two relevant transfers: (1) business sale or transfer; and (2) service provision change. The legal ownership of the premises itself need not transfer, but the act of operation of a business under a lease or contract can be transferred and fall under TUPE (*Landsorganisationen i Danmark v Ny Molle Kro 1989 ICR 330, ECJ*). In such circumstances, it is also possible for employees to transfer in two stages: first to the premises owner; and then to the new licensee (*Foreningen af Arbejdsledere i Danmark v Daddy’s Dance Hall A/S 1988 IRLR 315, ECJ*; *P Bork International A/S (in liquidation) v Foreningen af Arbejdsledere i Danmark and ors 1989 IRLR 41, ECJ*).
70. Fundamentally, though, the TUPE Regs act to protect employees (or in some cases workers) who were engaged under a contract at the point of the transfer. *Regulation 4(3)* states that employees employed immediately before the transfer would have employments caught by the TUPE Regs, unless they were dismissed unfairly before this in circumstances described by *Regulation 7*. That regulation describes circumstances where the transferor (on the claimant’s case Ms Lord) is instructed by the transferee (the respondent) to dismiss the employee (the claimant).

Discussion and conclusions

Was the claimant the Manchisee?

71. The use of the term ‘Manchisee’ seems to be a source of some confusion and ire between the parties. For the purposes of this judgment, I accept Mr Allingham’s explanation of what the Manchisee was intended to be – a franchisee who also had accountability for the direct management of the business as well as being the holder of the franchise. In short, it is intended to cover the role outlined by the commercial agreements such as the one the claimant signed at page 39. Plainly, this intended purpose may well not have been achieved in practice and it is possible that a ‘Manchisee’ may also be an employee or worker of the respondent or another.
72. I am aware that there has been a determination about this issue in the County Court during possession proceedings. I have seen the Court Order and respondent counsel’s note, which was not contested and which the claimant agreed to have present in the bundle. I am not bound by that determination, and have approached the evidence before me afresh. I, and not the District Judge, have heard full argument about this point over two days. Consequently, I consider that I should put the County Court findings from my mind for the purposes of drawing conclusions from the evidence on this issue.
73. In this case, the claimant signed the only contractual documentation setting out those ‘Manchisee’ roles and the obligations as between the parties. Prior to this, he was described as the new landlord, not as the manager under Ms Lord as an alternative

landlord. E-mails relating to the management of the business were sent predominantly to and from the claimant. The claimant attended events designed for franchisees. He was on site full time and was, in his own words, known as the face of the establishment. The notification in relation to the vacation of the premises and the end of the agreement were sent to the claimant and it is clear that the claimant and Ms Lord responded to those.

74. I have, of course, considered the arguments and the evidence supporting the contention that Ms Lord was the Franchisee. It is apparent, as I have accepted, that the money due to the claimant under the agreement was paid into Ms Lord's bank account. I have found that this was done on the advice of the claimant. Ms Lord then paid a small portion of that money to the claimant through PAYE. I accept that Ms Lord was entered on to some of the respondent's systems as the licence holder or Franchisee, but I have accepted the evidence offered that this was on the understanding that it was required for the system to allow the monies to be paid in the way that the claimant had directed. Similarly, I do not consider that the contention that Ms Lord might be a joint Franchisee to be persuasive – there is no evidence indicating that the respondent considered that Ms Lord was involved with managing the business unit. It is clear that Mr Sowman understood Ms Lord to be the Franchisee. However, there is no evidence from Mr Sowman to the effect that he was present at the time that the arrangements were entered into. It seems to me that Mr Sowman understood or assumed Ms Lord to be the Franchisee based on her instructions and the fact that payments were made to her. This is not necessarily the same factors to be taken into account when determining what the legal position is; Mr Sowman has, in my view, only part of the picture.
75. I consider the evidence from Mr Leanders to be of a similar nature. In cross examination, Mr Leanders explained that he understood that Ms Lord was the Franchisee. He could not, though, recount any discussion within the respondent which led him to form this view other than the fact that Ms Lord's name was on the bank account given to the respondent for payments to be made. It was suggested by the respondent that Mr Leanders' evidence was motivated by some desire for revenge against the respondent for reasons surrounding his departure. Mr Leanders maintained that he left the respondent with a good relationship and the respondent did not expand on this position despite the suggestion otherwise.
76. Mr Leanders did accept that Mr Allingham was the person ultimately responsible for appointing the Franchisees. He also accepted that only the claimant had signed an agreement with the respondent. Mr Leanders' witness statement asserted that he held authority to commit the respondent on the question of who the franchisee is, but he did not carry this argument through with force in his evidence and it is plain to me that he did not directly write his witness statement because the idiosyncratic language on its face is consistent with the other witness statements from the claimants' witnesses, and the written correspondence produced by Mr Johnstone.
77. None of these points displace, in my view, the very clear evidence from the respondent witnesses to the effect that (1) the claimant was always considered to be and treated as the Franchisee, (2) decisions about Franchisees would be made by Mr Allingham, and (3) Mr Allingham had never decided to appoint Ms Lord as the Franchisee. This is supported in the correspondence, where the claimant accepts

over a period of years that he is running the business unit at the Dog & Gun, does not query being treated as the Manchisee, and where Ms Lord does not assert herself to be the Manchisee at any time. It is also relevant that Ms Lord left the premises upon the breakdown of the marriage and that the claimant then operated the premises alone. The claimant was unhappy about he and Ms Lord being questioned about their personal relationship, but it is relevant to understand when Mrs Lord left and why Mrs Lord left if she was the Manchisee. I also consider it relevant that the respondent did not consider that it could ask the claimant to leave prior to terminating the franchise agreement.

78. I conclude, having considered the oral and written evidence, and the facts as found above, that the Dog and Gun franchise was operated between (1) the respondent as the landlord and licensor, and (2) the claimant as the franchisee and licensee (and referred to as a Manchisee). This accords with the principles of the 'Manchisee' model as described by Mr Allingham. The claimant, in the course of carrying on business, signed the franchise agreement to this effect and agreed to the clause expressing him to be bound to those terms. Ms Lord was involved with the finance and administration at the Dog & Gun, and managed the payment of money and staff. She was not, though, the owner of the franchise and she did not manage the business. In my judgment, her role, having considered the documents, was more akin to that of a financial controller or finance manager.

Was the claimant an employee or a worker of Ms Lord?

79. Having found that the claimant was the Manchisee, it becomes difficult to conclude that he was an employee or worker of Ms Lord at the Dog & Gun because he, and not she, was the individual holding both the premises license and the ultimate responsibility for the performance of the franchised business. Even if Ms Lord was a joint Manchisee, this would only support a possible claim that the couple operated in partnership and would, in my view, add further weight to the arguments that the claimant was not an employee or worker of Ms Lord. The claimant relies on himself and the witnesses supporting him labelling an employer-employee relationship between Ms Lord and himself as proof of that aspect of his claim. He also relies on the fact that he was paid through PAYE as supporting those statements. However, the witnesses on the claimant's side of the case offered no real detail about that employment relationship.

80. Given the guidance provided by the Supreme Court in *Uber* and *Autoclenz*, it was surprising that the claimant's five page witness statement did not set out any description of elements of control or obligations in place between Ms Lord or himself. There was no account of day to day interaction or supervision in that document, only a reference to being labelled as an employee on pay slips. Similarly, Ms Lord's statement was extremely brief on the nature of the claimed employment relationship. Her five sentence long witness statement said simply: *"I employed WD and was completely circumnavigated in all dealings up-to and after the fact that were set in motion to bring cessation to my dealings with the SB organisation"*. Nowhere did the claimant or Mr Johnstone engage with the thorny issue about whether the claimant or Ms Lord could show an intention to create legally binding relations between themselves in this way, given that they were for a large part of the relevant time married and living together domestically. This is an important consideration, and it was right that Mrs Duane should ask about that domestic relationship in cross

examination – even though I accept it could have caused some distress to the now separated couple.

81. Under cross examination, neither the claimant nor Ms Lord could articulate any terms which would form the basis of a contract between them. Neither of them offered a number in terms of the expected hours of work per week. The claimant said a number was agreed and he worked more than those, but he did not explain what that number was. He knew he was getting paid a fixed monthly amount but he did not know what his salary was or how his pay was calculated. He said that he was, variously, the 'general manager', 'bar manager' and 'assistant'. He acknowledged that Ms Lord had a full time job elsewhere meaning that he would need to report to her periodically, but he could not describe a typical interaction where he was subject to Ms Lord's supervision. He acknowledged that he may have held himself out as an employer of others with his words, but did not accept this meant he was the Manchisee in charge of the whole establishment. Ms Lord could not answer these points either.
82. Ms Lord said that she was not always on site and did have a full time job elsewhere, but that she was in the pub most evenings and would direct the claimant in his duties during those evenings. She could not, though, describe any particular encounter. She said that she had no formal means of managing the claimant's performance. She had no cogent explanation for why, despite the claimant's case that she was his employer and the Manchisee, there was no written evidence in the form of emails or messages between her and the claimant discussing issues with the business when she was away from the premises. In the circumstances where neither the claimant nor Ms Lord could articulate any terms of a contract between them, and when they were engaged for most of the time period in a domestic relationship, I conclude that there was no contract for services in place between them. This means that the claimant has not established that he is a worker under a contract for services either.
83. Both the claimant in his evidence and Mr Johnstone in his submissions placed a great deal of reliance on the fact that Ms Lord made payments to the claimant through PAYE and did not consider that this is but one factor that I should take into account. It was submitted that there was no other reason for the claimant to be paid through PAYE unless he was employed by Ms Lord. The claimant appeared offended when it was noted that someone might be paid through PAYE for any number of reasons, including that it could be more tax efficient or could save on administration in terms of completing tax returns. There is nothing nefarious or improper about such an arrangement, in my view, but it is because of those other possible reasons that being paid by PAYE is not taken as conclusive proof that someone is employed.
84. Case law from the Supreme Court of the United Kingdom makes clear that I must look beyond the paperwork in place to determine how the purported employer and employee operated in practice. This seemed to be a surprise to Mr Johnstone, who told me in submissions that he had never been required to provide more than pay slips to show an employment relationship. This may be so, but I must apply the law as it stands now in respect of determining these issues, and I do not consider that the claimant has discharged his burden of establishing that he was employed by or that he worked for Ms Lord. In the situation where the claimant was the Manchisee, Ms Lord did not have the authority over him required to act as his employer.

85. Considering all of the relevant tests in the law outlined above, I do not consider that the claimant has provided sufficiently cogent or detailed evidence to make out his assertion that Ms Lord employed him. The facts I have found do not support that. The claimant was unable, in my judgment, to overcome the presumption that he was a self-employed contractor which arose through the factual findings above and through my finding that he was the Manchisee with overall control of the business unit at the Dog & Gun.

Was the claimant employed by the respondent?

86. In the letter at page 286, Mr Johnstone asserts to the respondent that the claimant was their employee, and not an employee of Ms Lord. If this was indeed the claimant's view, as it seems to have been, then it further casts doubt on any claim that the claimant was an employee of Ms Lord in any event. No case was advanced that the claimant was ever under the control of the respondent. I can discern no argument or evidence indicating that there was any mutuality of obligation between the parties to these proceedings, other than very bald and unsubstantiated statements in the witness statements prepared for the claimant's witnesses to the effect that his employment transferred to the respondent when it took control of the premises. The opposite is so; the claimant was free to run the establishment as he wished in line with the broad commercial aims about profitability and viability that would be expected in a commercial arrangement.

87. I have concluded that the claimant was a self-employed franchisee. He was not the respondent's employee.

If the claimant was an employee of Ms Lord, did his employment transfer through the provisions contained within the TUPE Regs?

88. Even if I had found that Ms Lord was the Manchisee, was in a position to employ the claimant in his role, did so, and then the business transferred to the respondent, then I do not consider that this assists the claimant with his claims. I take into account the potentially wider definition of what an 'employee' is under the TUPE Regs, although the point was not pleaded or advanced by the claimant in the hearing. Nevertheless, I still consider that this claim has an obvious and fatal flaw even when considered in this hypothetical context.

89. Ms Lord was very clear in her live evidence that she considered that she had dismissed the claimant prior to the transfer. She said that she would not be able to employ him any longer. Ms Lord stuck to what she said in her witness statement on the point: *"As far as I am concerned having vacated the organisation and brought WD's employment to an end.."*. In my view, this was the only point about which Ms Lord demonstrated any clarity about exerting any sort of control over the claimant. She says she ended his employment. It did not continue in existence in a form which would transfer to another entity. There was no evidence that there was any instruction from the respondent to dismiss the claimant and no pleaded case that the dismissal was done as a result of a business transfer and so I do not consider that Regulation 7 would have applied. Ms Lord has not even said in evidence that she considered the claimant and employees at the Dog & Gun to have had their employments transferred.

90. Really, in my judgment, all Ms Lord was describing here was the end to the mechanism by which the claimant received money on the PAYE system. I accept that Ms Lord operated a payroll system for the claimant and others which made payments to staff, although I do not accept that this proves an employer/employee relationship. What this means, though, is that Ms Lord was required to act to cease those payments being made for PAYE purposes. Her clear evidence, repeated when I asked for clarification, was that she completed the claimant's P45 prior to the franchise ending. The TUPE provisions apply to those employed immediately at the point of the business transfer. Even if I considered that the claimant had been employed by Ms Lord initially, I would have to consider that his employment had ended some time prior to the transfer such that he would not have been caught by a TUPE transfer. There would be no employment to transfer because Ms Lord ended it.
91. This would also be the case in the un-pleaded alternative proposition, advanced by the claimant during his evidence, that the claimant's employment should have transferred to the new Manchisee. There would be no extant employment to transfer, even if the claimant could explain the significant period where there was no business unit activity at the premises in early 2022. In my view, there was no business unit carrying out trading between January 2022 and May 2022. Consequently, there was no business transfer at all between the claimant or Ms Lord, or the respondent, or the incoming Manchisee. The claimant's actions, in refusing to vacate the premises and then stopping the premises from trading for six months, has interrupted the business activity at the Dog & Gun.
92. If the claimant's view really is that he should have had his employment transferred seamlessly from Ms Lord to the new Manchisee, then I am not clear why he opted to sue this respondent with these claims. In any case, the claimant was not employed by Ms Lord or the respondent. He was self-employed, and so there was no employment to transfer.

Disposal

93. I have concluded that the claimant was what the respondent refers to as the 'Manchisee' at the Dog and Gun public house. He was the self-employed contractor who held a premises licence for the establishment, and lived in that establishment under the commercial contract outlined above. Consequently, he was not employed by the respondent and was not employed in his position by Ms Lord either. She did not run the business. His claim for unfair dismissal, in my judgment, must therefore be dismissed because the tribunal has no jurisdiction to hear it.
94. Further, even if I had found otherwise above and held that the claimant was Ms Lord's employee, then it is clear to me that Ms Lord's view is that she would have dismissed him prior to the transfer of the business taking place. This meant that, even on that alternative (and in my judgment untenable) view, the claimant would not have come to be in the respondent's employment. This would mean that his claim would come to be dismissed at this stage instead.
95. Indeed, if, as seemed to be the case in evidence, the claimant is in fact saying that he should have had his purported employment transferred to the new Manchisee,

then it is apparent that he has sued the wrong entity. He should instead have sued Ms Lord and/or the new Manchisee, whom had and whom he now seems to say should have employed him. Any claim against this respondent would have to be dismissed if that is the case as it has evolved to be put.

96. In those circumstances, it follows that there can be no breach of an employment contract which I have not found to exist. On the facts I have found, the claimant was arguably made redundant by Ms Lord. He was not made redundant by the respondent, and so his claim for a redundancy payment against this respondent must be dismissed.
97. In summary, having heard all of the evidence and tested the arguments, I consider that the claimant has brought no well-founded claim in these proceedings and they are all dismissed.
98. The respondent made an application for the claimant to pay its legal costs at the end of the hearing, based on (1) my oral remarks that none of the claimant's points of claim were close to being made out and that he appeared to me to have sued the wrong person for at least one of them, and (2) the conduct of Mr Johnstone during the course of the litigation. This is a matter to be dealt with separately and was not considered on 9 August 2022.

Employment Judge Fredericks

Date: 22 October 2022