



EMPLOYMENT TRIBUNALS

Claimants: (1) Mrs A Taylor
(2) Mrs P Bradley
(3) Miss S Atkin

Respondents: (1) Flawless Makeover Studios Ltd
(2) Global Business Sales Ltd (in voluntary liquidation)

On: 26 October 2022

Before: Employment Judge Sweeney

Appearances

For the Claimants, all in person

For the Respondent, Harry Wiltshire, counsel

JUDGMENT ON PRELIMINARY ISSUE

1. The Claimants were, at the date of termination of their employment and at all material times prior to the date of termination of employment, employed by the First Respondent.
2. The Second Respondent is dismissed from the proceedings.

REASONS

The Pleadings and procedural background

1. There were initially four claimants in these proceedings with complaints under the following case numbers:
 - 1.1. Nichola Brown (2500530/2022); (2500617/2022)
 - 1.2. Amy Taylor (2500611/2022); (2500615/2022)
 - 1.3. Pauline Bradley (2500531/2022) and (2500612/2022); (2500614/2022)

1.4. Sara Atkin (2500616/2022)

3. In her Claim Form, Mrs Bradley says that she was a Telesales Manager who had been employed by R1. She complains that Ms Chippendale terminated her employment on **04 April 2022** and told Mrs Bradley that she had been employed by Global, which was going into liquidation. It is her case that she did not work for Global (R2); that she was told that she was being made redundant by a company that she did not know she worked for. That is also the case of Ms Atkin and Mrs Taylor.
4. R2 did not serve a response to the proceedings. In its Response, R1 says that Mrs Bradley had never been employed by R1; that R1 is a business whose operations are based in Manchester and that R1 does not have, and has never had, any premises and/or operations in Middlesbrough. The Response goes on to say that Mrs Bradley worked in the offices of Global in Middlesbrough and that her name does not appear anywhere in the books and records of R1. It says the same about the other Claimants; that Global paid for all outgoings for those offices and that signage on the offices all have the name Global.

The Public Preliminary Hearing

5. At a private preliminary hearing on **28 July 2022**, I determined that there be a public preliminary hearing for the purposes of determining the identity of the employer of the claimants. It was also subsequently directed that other matters be considered at that hearing.
6. The day before the hearing started, the Tribunal was informed that the Respondents and Ms Brown had arrived at an agreement. Mr Wiltshire at the outset of today's hearing confirmed his understanding that her claims were or were to be withdrawn.
7. Therefore, at the outset of the PUPH, it was agreed that the issues for today were in relation to Mrs Bradley, Ms Atkin and Mrs Taylor:
 - (1) To determine whether, as of **04 April 2022**, the Claimants were employed by R1 or by R2 ('the employer point')
 - (2) To determine applications to add complaints against R1 and R2 (subject to the determination on the employer point);
 - (3) To determine applications to add an additional respondent, namely Sanchia Kay Chippendale.
8. Due to the lateness of the hour (we did not finish until 5.30pm) we were able to deal only with evidence and submissions on the first issue, on which I reserved judgment. It was agreed that submissions could be made in writing on the second and third issues, which would avoid the time and cost to the parties of having to return to the tribunal. I directed that any written representations be sent to the Tribunal and to each other by 9am on **04 November 2022**. My decision on the

second and third issues is set out in separate orders. I am concerned here only with the first issue.

9. The three remaining Claimants gave evidence at the hearing. R1 called Ms Chippendale.
10. Each party prepared a separate bundle of documents. This was not what I had envisaged at the private preliminary hearing and not what I had ordered. Nevertheless, we proceeded by reference to both bundles without any difficulty. Some further documents were handed up by Mrs Bradley and Miss Atkin. I have referred to documents by reference to the respective bundles by letters C and R. For example, 'page C1' (for the Claimants' documents) or 'page R1' (for the Respondent's documents).
11. In the case of Mrs Bradley, the additional documents which she provided on the day related to an attachment of earnings order. The documents were given the page references 'C1 – C8'. In the case of Miss Atkin, she handed up a document relating to an alleged driving offence. This was given the page reference 'C9'. There was no objection from Mr Wiltshire to those documents being admitted in evidence.
12. At the outset of the hearing, I wished to understand whether R1 accepted that it had ever employed any of the Claimants. Mr Wiltshire accepted that Mrs Bradley had been employed by R1. When asked about Miss Atkin or Mrs Taylor, Mr Wiltshire said 'that R1 did 'not necessarily' accept this. That was an unsatisfactory answer and when asked again whether R1 accepted that it had employed them, Mr Wiltshire replied 'we do not know'.
13. As regards Mrs Bradley, Mr Wiltshire explained R1's position to be that there had been a TUPE transfer, the evidence for which was found at **page 56** of R1's bundle. The possibility of a TUPE transfer had not been foreshadowed either in the pleaded case, or in the discussion at the preliminary hearing, at which R1 was legally represented by Mr Jones, solicitor. Mr Wiltshire agreed and when asked whether this was inconsistent with R1's pleaded case could only say that the first sentence at the top of **page 27** was incorrect. No application was made to amend the pleading.

Findings of Fact

14. The First Respondent (R1) (or 'Makeover') is a limited company which was incorporated on **04 March 2005**. Sanchia Kay Chippendale is currently the sole director of that company. There have been other directors, notably Martin Wilkinson. Mr Wilkinson is Ms Chippendale's former husband.
15. Ms Chippendale is also a director of numerous other companies, one of which is the Second Respondent (R2) (or 'Global'), now in voluntary liquidation. Mr Wilkinson was also a director in that company, which was incorporated on **02 July 2008** and in respect of which an insolvency practitioner (Jeremy Michael Bennett) was appointed on **29 April 2022**.

16. Other companies of which Ms Chippendale is a director are:

16.1 Flawless Photography Studios Ltd ('Photography'), incorporated **02 July 2008**,

16.2 Flawless Studios Leeds Ltd ('Leeds'), incorporated **06 February 2014**,

16.3 Flawless Properties Ltd {'Properties'}, incorporated **16 July 2015**

17. Mr Wilkinson was also a director in those companies. Both Ms Chippendale and Mr Wilkinson were also the shareholders of the companies (and Ms Chippendale remains a shareholder). In respect of all five companies, Mr Wilkinson resigned his directorship on **30 October 2017**. This was as part of an agreement on his and Ms Chippendale's divorce. Although divorced, he continued to run and manage R1. He carried on as Operations Director (although not a statutory director) of R1 and continued to have charge of all the operations in Middlesbrough. As Ms Chippendale accepted in evidence, her now ex-husband oversaw and ran Middlesbrough. He managed Global, Flawless and Photography in Middlesbrough. He was an employee of Flawless Makeover Studios Ltd and continued to run matters up to **January 2022** although he remained a paid employee until **May 2022**.

18. The Claimants were 'office staff'. They worked at Vanguard Suites, Broadcasting House, Middlesbrough. Their role, as telesales people, was to sell vouchers which would then be used in the makeover and photography studio at 16 Brentnall Street, Middlesbrough. A voucher entitled the customer to go to a studio and have makeover and a photo shoot to a stated value expressed on the voucher. It is the sort of thing a person might buy as a gift for a friend or family member. The customer would take the voucher to the studio at 16 Brentnall Street, where they would have their makeover and have their photograph taken professionally. All those working out of Vanguard Suites or Brentnall street, including the Claimants, were all part of what Mr Wilkinson referred to as 'the Flawless family'.

19. Ms Chippendale, in oral evidence in chief, said that the rent and rates for 16 Brentnall Street were paid by Photography. R2 sold vouchers for each of the 'Flawless' businesses (with the exception of Properties). Ms Chippendale said that the Flawless companies were 'clients' of Global. She also described the relationships between the companies and the various offices/premises as set out in the following 2 paragraphs.

20. Within the building known as 'Broadcasting House', in Middlesbrough there are premises known as 'Vanguard Suites'. This consisted of two rooms. The first room was, said Ms Chippendale, occupied by Global (R2) and the second by Photography. Over the years, Ms Chippendale said that Global employed anywhere between 5 and 12 people at any given time. The second room consisted of about 7 or 8 employees (at least, that is, before the first Covid pandemic). According to Ms Chippendale, the employees working out of the other room worked for Photography. She said that each entity 'Global' and 'Photography' paid for their share of the suite.

21. I emphasise that this is the relationship and set up as described by Ms Chippendale in her oral evidence. I hesitate to make findings of fact as to the true nature of the financial/commercial relationship between R1 and R2 described by Ms Chippendale, as I am compelled to record that I found her to be an unreliable witness and in parts untruthful. I emphatically make no findings as to which company paid the rent for which premises or as to whether Photography employed staff based in one of the rooms at Vanguard Suites.
22. In contrast, I found all of the Claimants to be straightforward and honest in the evidence they gave to the Tribunal. Their clear evidence of what was happening on the ground and as to the identity of their employer differed markedly from that expressed by Ms Chippendale.
23. Whatever Ms Chippendale's perceptions of the operations in Middlesbrough, one finding that I am able to make with certainty is that she had extremely little involvement in the day-to-day operations of the business undertaken by R1 or R2 in Middlesbrough, whichever of the limited companies was technically or operationally involved. The control of what was happening on a day-to-day basis was very much down to her former husband, Mr Wilkinson. That was the case in respect of R1 and R2, which she accepted. Anything to do with staff in Middlesbrough and the operations of the businesses in Middlesbrough fell to him. Ms Chippendale had no understanding of what contracts of employment were being issued by Mr Wilkinson. She had no understanding of the day-to-day exercise of management and control. One further finding I am able to make with certainty is that in documents filed with Companies House, R2 gave as its trading address as 16 Brentnall Street, Middlesbrough.
24. Contrary to R1's pleaded case, there was no signage at Vanguard Suites or Broadcasting House indicating the presence of Global (R2) in that building. All three of the Claimants, who worked in that building said as much and I accept their evidence as truthful. In support of their oral evidence, the Claimants produced some photographs showing signage referring to 'Flawless' and 'Makeover & Photography Studios'. There is nothing referring to Global. In contrast, Ms Chippendale produced nothing to show any signage relating to R2.
25. As with all non-essential businesses, the premises at Broadcasting House and Brentnall Street were closed during the first national lockdown. On **12 June 2020**, Mr Wilkinson emailed staff to say that they were now in a position to schedule the return to work '*for our Flawless Offices & Studios*'. The distinction which I find Mr Wilkinson made in that email was as between 'office staff' and 'studio staff'. The Claimants, who worked in telesales in Vanguard Suites, were office staff and those who worked in the makeup and photography studio, at Brentnall Street, were the studio staff.
26. Throughout the whole period of the Claimants' employment, R1 advertised for telesales staff (that is the work the Claimants carried out) by referring to 'Flawless Makeover & Photography Studios' in Middlesbrough. There has never once been any reference to Global Business Sales Limited or to employment by that company. Anyone seeing those adverts or visiting the premises either at Broadcasting House or 16 Brentnall Street would inevitably conclude that they were to work for a

company with, at the very least, 'Flawless' in the name. They may not have realised from that whether they would be working for 'Makeover' as opposed to 'Photography' but there was certainly nothing to indicate to them that they would be working for a company called Global Business Sales Ltd.

27. The only time anyone ever said to the Claimants that they were employed by R2 was when Ms Chippendale came to Middlesbrough on **04 April 2022**. On that day, she told them that R2 was going into liquidation, that they were employed by R2 and that they should make a claim to the Insolvency Service.
28. Ms Chippendale has not produced any contractual documentation relating to the Claimants either in respect of their relationship with Global (R2) or Makeover (R1). In her evidence, Ms Atkin, when asked where the original copy of her contract was (the first page of which is at **page C4**) explained that, in or around March 2022, the original contract and other documents such as holiday forms, contracts and personal details of all employees, were taken by Andrew Mulvaney, sales manager. because, as he explained to her, Ms Chippendale wanted them. I accept that evidence.
29. Ms Chippendale did produce a template contract at page **R48-50**, which she referred to as 'Peninsula's contract'. That is a reference to the well-known organisation Peninsula Business Services Ltd which provides HR, legal and other services for employers. This blank template refers to employment by Global (R2). However, this was never issued to any of the Claimants. When asked to explain this, Ms Chippendale said that it was down to Mr Wilkinson.
30. The Response prepared by R1 was approved by Ms Chippendale prior to it being presented to the Tribunal.
31. I turn now to the individual claimants.

Pauline Bradley

32. Mrs Bradley commenced employment with R1 on **02 February 2010** as a Telesales Manager. She has a contract of employment with R1 giving her place of work as The Vanguard Suite, Broadcasting House [**page C29-31**]. She reported to John Hopper. Her place of work was The Vanguard Suite. She worked full time. Her wages were paid by BACS payment into her husband's bank account. Payments were made by R1, as demonstrated by a copy of some bank statements in 2011 and 2012 (**pages C32 and C33**). On **31 August 2011** there is a payment of £1,216.84 against 'Flawless Make Ltd'. On **31 January 2012**, there is a payment of £1,217.04 against 'Flawless Make Ltd Flawless Studios'.
33. Mrs Bradley's email address was pauline@flawlessmakeovers.co.uk. Recruitment adverts prepared by Mr Wilkinson referred to recruiting people to work for Flawless Makeover and Photography Studios. As far as Mrs Bradley understood, when she interviewed candidates and recruited them to employment, as she did many times over the years, it was to employment with R1 and not any other company.

34. In addition to her line manager, Mr Hopper, Mrs Bradley's dealings were primarily with Mr Wilkinson. She took direction from Mr Wilkinson, who was a director of and an employee of R1.
35. At some stage during the employment of Mrs Bradley, she noticed that the identity of the organisation paying her wages into her bank account changed. This was sometime in **2013**. She also noticed a reference to R2 on the occasional payslip that she received. Mrs Bradley queried this with Mr Wilkinson. He told her not to worry that it was just money from a 'different pot'. Mrs Bradley trusted Mr Wilkinson and accepted what he said, thinking nothing more of it.
36. In support of its contention that Mrs Bradley was employed by R2, the Respondent produced a document at **page R57**. This was an extract from R2's HSBC bank account, showing a payment of £1,592.79 on **28 May 2021** to 'Pauline Bradley Flawless'. There are similar references from **December and July 2021** on pages **R102** and **R103**. However, those documents do no more than confirm that Mrs Bradley's pay came from R2's bank account. It is not inconsistent with the evidence she gave, and which I accept as truthful, namely that Mr Wilkinson had said it was just money from a different pot. Indeed, the payments specifically reference that the payment is in respect of 'Flawless'. If it had been the case that the payment was in respect of Global employees, one might wonder why there was any need to refer to 'Flawless' at all. But that is by-the-by. The important point is that Mrs Bradley was aware that money was coming from R2's bank account but was reassured it was nothing to be concerned about.
37. At the beginning of this hearing, it was said to be R1's case that Mrs Bradley's employment (along with that of others) had transferred under TUPE back in 2013. However, that position was abandoned when Ms Chippendale came to give evidence. Nevertheless, I must deal with a contentious point relating to whether, in 2013, Mrs Bradley agreed to move from employment with R1 to employment with R2. Although in its Response, R1 positively stated that R1 had never employed Mrs Bradley and that R1 has never had any operations in Middlesbrough, in paragraph 17 of her witness statement, Ms Chippendale said that it had employed her to 'grow and develop the studio in Middlesbrough'. This is a significant departure from the pleaded case.
38. In her oral evidence in chief, Ms Chippendale initially said that she came to Middlesbrough in 2013 and met with Mrs Bradley who agreed to change her employment from R1 to R2. She accepted that she had not 'TUPE transferred but had agreed to transfer. She referred to **page R56**, which is an internal document showing the employer of Mrs Bradley as 'Global Business Sales Ltd' with a start date of **01 April 2013**. Ms Chippendale later said that she could not recall the sitting down and discussing this with Mrs Bradley nor the content of any discussion she had with her, but that she 'would have' discussed things with her and she (Mrs Bradley) 'would have' agreed and that other employees 'would have' agreed to change employers as well, adding that she 'could not confirm that'. When cross examined by Ms Atkin, Ms Chippendale then said that she recollects sitting down with Pauline in 2013 but not what was said. When asked how that can be, when the Response says that R1 never employed Mrs Bradley, Ms Chippendale said that she could not answer that.

39. I find that there was no such discussion between Ms Chippendale and Mrs Bradley in 2013 or at any other time regarding the transfer of her employment from R1 to R2. Nor was there any written communication to that effect. That is also the case with other employees. I find that the document at **page R56** was prepared without the knowledge of Mrs Bradley and was done for financial, accounting or commercial purposes of the owners and directors of R1 and R2.

40. The Respondent produced a document at **page R60**, which is a letter from HM Courts & Tribunals Service, dated **19 August 2022**. It is addressed to the Payroll Manager at Global Business Sales Ltd, 17 Ascham Hall, Bingley. It states:

“Under an attachment of earnings order made in this Court you were ordered to make deductions from the above named employee’s pay. ...”

41. Mr Wiltshire suggested this was evidence that Mrs Bradley told the court she was employed by Global, and therefore, evidence that she knew full well who her employer was, contrary to her evidence in these proceedings. I reject that suggestion. Quite how HMCTS came to write to Global Business Sales Ltd is unclear. She had not seen the letter until shortly before this hearing. When Mrs Bradley saw the reference to this in the witness statement of Ms Chippendale, she obtained a copy of the Finance Proposal Form, which was the subject of the debt action against her. This is the document which she added to the hearing bundle as new **pages C1-8**. In that document, she identifies her employer as being ‘Flawless Makeover’. I accept her evidence that she did not tell the court that her employer was R2.

42. The first time anyone ever said to Mrs Bradley that she was employed by Global was Ms Chippendale, on **04 April 2022**, when she came to Middlesbrough to terminate her employment and that of the others. She was given no notice, no redundancy payment. She was due some unpaid wages and accrued holiday pay. She was told that she should claim these payments from the state.

43. Mr Wiltshire invited Mrs Bradley to look at **page R281**, which is her application for payments from the Insolvency Service, and in particular, **page R286**, the declaration and statement that ‘*we may take legal action against you if you knowingly make a false statement in your claim*’. This, suggested the Respondent, was evidence that Mrs Bradley knew and accepted that her employer had been R1.

44. Before she signed the application and the declaration, Mrs Bradley emailed the O’Hara’s Recovery, who were assisting Mr Bennett in the liquidation. In her email of **13 April 2022 (page C48)** she said:

‘My name is Pauline Bradley, I understand you want our details as 7 of us are left without a job through this sham redundancy. I started with Sanchia Kay Chippendale on 2/2/2010 under Flawless Makeover Studios Ltd then app changed to Global business sales somewhere along the way without knowledge.’

45. The word 'app' is shorthand for 'apparently', explained Mrs Bradley – which I accept. She was expressing to the liquidator that her employer was Makeover (R1) but that this had 'apparently' changed to Global (R2). She was referring to the fact that, on **04 April 2022**, she had been told for the first time, that she was employed by Global. Mrs Bradley explained to those handling the liquidation that she believed she was employed by R1.
46. The circumstances she found herself in were not of her making – the same applies to the other claimants. Mrs Bradley had a written contract of employment identifying her employer as R1. She had been encouraged not to worry when she saw a reference to Global on her bank statements. She was given payslips on rare occasions, which after 2013, bore the reference to Global but nothing had ever been said to her about employment by Global and she was very much led to believe that her employer was R1. That is, until **04 April 2022**, the date on which her employment terminated. I shall say more about this in my conclusions.

Sara Atkin (formerly Chapman)

47. Miss Atkin had two periods of employment. The first period was from 2010 to 2020. The second period was from **04 October 2021 to 04 April 2022**.
48. During her first period of employment, Ms Atkin was paid every 4 weeks by BACS. As in Mrs Bradley's case, she had a contract of employment from **2010** which identified the employer as R1. The reference on her bank statements was that of R1.
49. Sometime in **2013**, she too noticed that the identification of the company paying money into her bank account had changed to Global Business Sales (R2). She brought this to the attention of Ms Chippendale and asked why it had changed. Ms Chippendale told her that the staff still work for Flawless and all that changed was that they were paid 'from a different pot'. Ms Atkin checked the reference on the transactions and saw that it said 'Flawless'. Ms Atkin produced a document at **page C13** showing a screenshot of her bank transaction from Global Business Sales stating 'Flawless' as the reference. At the time, to further reassure her, the then Sales Manager told her that she was 'an integral part of Flawless' (**page C14**). Therefore, she did not think any more of it. She trusted Ms Chippendale and took on good faith what she was told. The reference to being paid from a different pot is consistent with what Mrs Bradley had been told.
50. Neither Ms Chippendale nor Mr Wilkinson ever spoke to Ms Atkin in 2013 to ask her to transfer her employment from R1 to R2. No one at all ever mentioned employment by R2 at any point before she left the first period of her employment.
51. Ms Atkin left her employment in 2020 for a short period as result of the Covid pandemic. However, she returned to work there. On **04 October 2021**, she completed a new starter form. The heading on the form was Flawless Makeover Studios Ltd (R1). She signed a contract on the same day (**page C4**). She retained an unsigned copy, having given the signed copy to Mr Wilkinson.

52. That contract of employment identifies the employer is R1. Mr Wiltshire observed that it contained only the front page. Ms Atkin was directed to provide the whole copy, which she did on **28 October 2022** and in respect of which Mr Wiltshire was permitted to make further submissions by **04 November 2022** if he so wished. However, the issue was not the terms of the contract but the identity of the employer. Miss Atkin had innocently disclosed only the front page because the content of that page went directly to the issue at this hearing. She cannot be criticised for doing this and I noted that the Respondent had not asked for the full copy, despite being in possession of the front page for some time.
53. Following her return in **October 2021**, Miss Atkin was paid every 4 weeks by BACS transfer into her bank account (albeit a different bank account). Given what she understood from before, namely that the money was simply coming from a different pot (the Global 'pot') she thought nothing more about the reference to Global on bank statements and understood that, as before, she was employed by Makeover. She took her direction from Mrs Bradley, who took direction from Mr Wilkinson.
54. When she started her second period of employment in **October 2021**, given that R1's case is that she was employed by R2 one might have expected her to have been sent a contract similar to that at **page R48**, but she was not given any such contract. When asked to explain this, Ms Chippendale said that it was down to Mr Wilkinson. Even if no contract had been provided, one might have thought Mr Wilkinson, at some point, would have mentioned to her and to the other claimants (and other staff) that she and they were employed by Global. I accept Ms Atkins' evidence that he did not do so. I also accept that no other person mentioned this to her at any time during the second period of her employment, other than on **04 April 2022**, as in the case of Mrs Bradley.
55. On **25 October 2021**, Ms Atkin sent a WhatsApp message to Mr Wilkinson attaching the new starter form and her bank details. At no point did Mr Wilkinson point out that her employer was not R1 but R2.
56. On **30 March 2022**, Miss Atkin completed a holiday request form with the name 'Flawless' on the top of the page.
57. In support of its argument that Ms Atkin had been employed by R2 and that she was aware of this, R1 referred to **page R270** (an attachment of earnings order). Ms Atkin had been charged with a speeding offence in the Bradford area. In **November 2021** HMCTS West Yorkshire wrote to Global (R2) regarding an attachment of earnings order in the sum of £816. The amount was deducted from payments made to her by Global. Mr Wiltshire put it to Miss Atkin that she must have told the court to write to Global and that this was evidence that she knew full well that R2 was her employer. I reject the suggestion. I accept Ms Atkin's evidence that she did not tell the court that her employer was Global or that it should write to Global. She always said her employer was Flawless Makeover Studios because that is what she has consistently believed and understood during the two periods of employment. She had a contract of employment in October identifying R1 as her employer. On **12 January 2022**, Miss completed a statement of means (this is the new document which she introduced at the outset of the hearing, following receipt of Ms Chippendale's statement: new **page C9**). It is clear that in that document,

she identified her employer as 'Flawless Makeovers'. Ms Atkin had not seen the letter at **page R270** until these proceedings.

58. When her employment was terminated by Ms Chippendale on **04 April 2022**, it was without notice or notice pay; she also had some outstanding accrued but untaken holiday. She was informed to apply to the Insolvency Service.
59. She applied for payment out of the Insolvency Fund on the liquidation of Global.
60. It was suggested that, like Mrs Bradley, she was dishonest in her application or that she knew full well her employer was R2. I reject this. Ms Atkin contacted Mr Pintar and even sent a copy of her contract of employment with R1. She made Mr Pintar aware that she believed her employer to be R1. Mr Pintar told her that he would have to speak to Mr Jones. Mr Jones is the solicitor who represented R1 at the private preliminary hearing. Ms Atkin understood from her conversation with Mr Pintar that she should apply for outstanding payments in the liquidation, which is what she did.

Mrs Taylor

61. On **18 October 2021**, Mrs Taylor responded to an advert to work for what she understood to be Flawless Makeovers Studios Limited. When she attended Vanguard Suite for the interview on **20 October 2021**, she noted the sign by the lift said Flawless Makeovers Studio. That sign never changed during her employment, or indeed, during the period of employment by the other Claimants.
62. As she was applying for the position of telesales staff, she was given a script. Mrs Taylor produced an example of a script on page **C57**, which among other things required her to say: *'I'm calling from Flawless Makeovers Head Office'*.
63. Mrs Bradley offered Mrs Taylor the job in an email dated **20 October 2021**, in which she said: *'Thank you for attending your recent interview with Flawless...I am delighted to write to offer you the position of Telesales Executive at Flawless Makeover and Photography Studios.....we look forward to welcoming you to be part of our Flawless Family.'*
64. From time to time, Mrs Taylor (and the other employees) Mrs Taylor would refer to the name of R2. The only time this happened was if a customer wished to do a bank transfer when paying for the voucher, rather than cash. In that case, she was told to give the bank details for Global. In Mrs Taylor's experience, this simply confused customers and she recalls one customer who refused to pay, believing that she was the victim of a scam. However, it meant no more to her than that. She did not at any time consider her employer to be Global.
65. Unlike the position with Mrs Bradley and Ms Atkin, Mrs Taylor was not provided with any written contract. Mr Wiltshire referred to **page R75**, which is a payslip made out in the name of Mrs Taylor. It refers to Global. Leaving aside the reference to 'Miss' Taylor, I find as a fact that this payslip was never given to her at the time payment was made or during her employment. Indeed, in her period of employment she had not received any payslips.

66. Mrs Taylor was managed by Mrs Bradley, who in turn was managed ultimately by Mr Wilkinson.
67. She too applied for payments from the Insolvency Service. As in the case of Mrs Bradley, she emailed those assisting in the liquidation to say that she was employed by Flawless Makeover Ltd. She was told that Flawless Makeover Ltd had never been in Middlesbrough. She was told that if she was to receive any payment it had to be in respect of employment by Global, which is why she signed the declaration at **page R304**.
68. At no point did she believe or know that she was an employee of Global Business Sales Limited. As far as she was concerned, she was in no different position to that of Ms Atkin or Mrs Bradley, which was that she was employed by 'Flawless Studios and Photography'. Her position is slightly different, in that Mrs Bradley and Ms Atkin understood (and had written contracts of employment in support) their employer to be Flawless Makeover Studios Ltd. Mrs Taylor understood only that her employer was 'Flawless'. She was not in any position to distinguish between the various companies with the name 'Flawless' in them. However, I find that from an operational and managerial viewpoint, her position was no different to that of Mrs Bradley and Ms Atkin.
69. Having made findings in relation to the three individuals, I turn now to some matters relating to all three.

Workplace pensions

70. The Respondent produced letters relating to Workplace Pensions. In Mrs Bradley's case, she was taken to the documents at page **R192**. It is a letter addressed to her. The letter says:
- "Automatic enrolment is new legislation which means that all employers must enrol their workers into a workplace pension scheme automatically. I am writing to you to inform you about this new legislation and that it affects Global Business Sales Ltd from **01/07/2017**."*
71. Curiously, there is a date at the top of the document of **29 October 2018**. The discrepancy in these dates is unexplained. The letter is unsigned at **page R194**. The first time Mrs Bradley had ever seen this letter was when in this bundle, when she got the hard copy on **19 October 2022**. It may have been sent electronically earlier, but many months after the original date for disclosure. The point of significance is that, at no time during her employment was she given a copy of this letter.
72. Mrs Bradley knew that there was a workplace pension in place, but not that R2 had been identified as the employer. She, and the other Claimants, were concerned that they had not received any information about their pensions from R1, or for that matter from R2. Mrs Bradley contacted 'Now pensions'. It was explained to her by the person she spoke to that they have never posted anything to her, that all

correspondence was with Mr Wilkinson, through his email address. She has since changed the correspondence details.

73. What she discovered after her employment terminated was that the pension scheme was in the name of R2 but that is something she was never told.
74. In **March 2022** (shortly before her employment was terminated) Ms Atkin became aware that Global was 'running' the pension scheme. She received the letter of **22 December 2021**, at **page R87** from Now Pensions in March 2022, only after she made inquiries. The letter, she saw, gave as the employer's name 'Global Business Sales Ltd'.
75. Although the correspondence from Now Pensions, on its face, appears to be correspondence sent to the address of Ms Atkin, in practice the letters were sent to Mr Wilkinson and Ms Chippendale. They were not passed on by them to Ms Atkin. The same goes for the other employees.

Payslips

76. Payslips were not regularly provided to the Claimants. Indeed, it was rare for them to be given payslips and Mrs Taylor did not receive any. Employees received the occasional payslip – but even then, they had to request access to them. They would ask Mrs Bradley, who in turn had to chase Mr Wilkinson to provide staff with payslips, even her own.
77. Mr Wiltshire put it to Mrs Bradley that she had access to all payslips of all staff. I reject that and I accept Mrs Bradley's evidence that she did not. Mr Wiltshire referred Mrs Bradley to **page R71**, to demonstrate this access. If anything, this supports Mrs Bradley's oral evidence. On the occasion to which this email relates, and in response to her request to have access to an employee's payslips, Mr Wilkinson sent an email with a code enabling her to access the payslips in question. However, the access was limited to the payslips which the employee had asked to see. It was not open-ended access for the employee in question or for employees generally. She did not have any general oversight of, or access to her own payslips or those of any of the staff that she managed. Under section 8 Employment Rights Act 1996, there is a statutory obligation on an employer to give to a worker on or before the time at which any payment of wages or salary is made to her, a written itemised pay statement. I accept the evidence of the claimants that this was not the practice with regards to their employer.
78. When she did get to see payslips, Mrs Bradley saw that the name Global Business Sales Ltd appeared on them. However, all that meant to her was that the money for their wages was coming out of a different pot, as had been explained by Mr Wilkinson and Ms Chippendale.
79. There were 3 pages of payslips produced by R1 in the case of Ms Atkin (pages **R147-149**). They refer to Global Business Sales Ltd. Ms Atkin had seen the payslips dated **18 February and 18 March 2022** because she had expressly requested them. Again, this simply meant to her that the money was being paid from a different pot, as had been explained to her many years earlier.

Lauren Whitehead

80. The Respondent produced an email dated **31 March 2022** on **page R96**, from Mrs Bradley to someone called Dan at 'Triage'. This was less than a week before Ms Chippendale came to Middlesbrough on **04 April 2022** to tell the Claimants, without prior warning, that their employment was terminated.
81. Triage is an employment agency which aims to get unemployed people back into work. The email concerned Lauren Whitehead, who is referred to in Mrs Bradley's witness statement, at paragraph 6.2. Ms Whitehead was one of the last people Mrs Bradley had recruited. She sent a letter of offer on **11 January 2022 (page C39)** referring to an offer in respect of 'the position of Telesales Executive at Flawless Makeover and Photography Studios'. At the bottom of the page is a reference to Mrs Bradley's name and 'Telesales Manager – Flawless Makeover and Photography Studios Ltd'.
82. Mr Wiltshire put to Mrs Bradley that there was no such company. That may well be so, and Mrs Bradley does not say that there is such a company. However, this was not her template. It was provided to her by Mr Wilkinson. Mr Wiltshire also put to Mrs Bradley that in her email to Dan from Triage, she stated that Ms Whitehead started employment with Global Business Sales.
83. Mrs Bradley accepts that is what she said. However, I find that she wrote the email in those terms because Dan had expressly requested it in those terms. The issue as Mrs Bradley was given to understand at the time was that, as far as Triage could see, Lauren Whitehead was not down as being employed by **any** company, not R1 or R2. It was explained to Mrs Bradley by Dan that the only proof of employment Lauren been able to show Triage that she was employed by anyone at all, was a payment being made by Global. The way Triage works is that it also makes a payment to Lauren but subject to her being employed. Dan wanted to ensure that Lauren was paid by Triage and asked Mrs Bradley to write the email in those words as it would match the name of the organisation which had paid Lauren. Mrs Bradley agreed to write it in those terms, simply in order for Lauren to receive payment from Triage. To the extent that it is suggested this demonstrates any knowledge or belief on the part of Mrs Bradley that she, or Ms Whitehead, was in fact employed by R2 and not R1, I reject the suggestion. I am satisfied and so find that that is not how Mrs Bradley understood it.

Relevant law

84. The employer's obligation to pay remuneration is one of, if not the most important, elements of an employment contract. In **Ready Mixed Concrete v Minister of Pensions and National Insurance** [1968] 2 QB 497, MacKenna J famously said, in what is now outdated language:

"A contract of service exists [when] three conditions are fulfilled: (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master; (ii) He agrees expressly or impliedly that in the performance of that service he will be subject to

the other's control in a sufficient degree to make that other master; (iii) The other provisions of the contract are consistent with its being a contract of service".

85. Section 230(4) ERA 1996 defines 'the employer' in any given case as 'the person by whom the employee.....is (or where the employment has ceased, was) employed.' The question of who the employer was is a question of fact. Normally, this is straightforward and uncontentious. However, in some cases it may be contentious, for example, in those cases where there is a complicated corporate structure, with the potential for there to be one of a number of legal entities being the employer for legal purposes.

86. In Harvey on Industrial Relations and Employment Law there is a helpful summary of the legal principles which have been derived from cases where the issue of identification of the employer has arisen. That summary, found at Division AI, para 132.05 is taken from the decision of the EAT in **Clark v Harney Westwood & Reigels** [2021] IRLR 528 is as follows:

"In my judgment, the following principles, relevant to the issue of identifying whether a person, A, is employed by B or C, emerge from those authorities:

- a. Where the only relevant material to be considered is documentary, the question as to whether A is employed by B or C is a question of law: *Clifford* at [7].
- b. However, where (as is likely to be the case in most disputes) there is a mixture of documents and facts to consider, the question is a mixed question of law and fact. This will require a consideration of all the relevant evidence: *Clifford* at [7].
- c. Any written agreement drawn up at the inception of the relationship will be the starting point of any analysis of the question. The Tribunal will need to inquire whether that agreement truly reflects the intentions of the parties: *Bearman* at [22], *Autoclenz* at [35].
- d. If the written agreement reflecting the true intentions of the parties points to B as the employer, then any assertion that C was the employer will require consideration of whether there was a change from B to C at any point, and if so how: *Bearman* at [22]. Was there, for example, a novation of the agreement resulting in C (or C and B) becoming the employer? In determining whether B or C was the employer, it may be relevant to consider whether the parties seamlessly and consistently acted throughout the relationship as if the employer was B and not C, as this could amount to evidence of what was initially agreed: *Dynasystems* at [35].

To that list, I would add this: documents created separately from the written agreement without A's knowledge and which purport to show that B rather than C is the employer, should be viewed with caution. The primacy of the written agreement, entered into by the parties, would be seriously undermined if hidden or undisclosed material could readily be regarded as evidence of a different intention than that reflected in the agreement. It would be a rare case where a document about which a party has no knowledge could contain persuasive evidence of the intention of that party. Attaching weight to a document drawn up solely by one party without the other's knowledge or agreement could risk concentrating too much weight on the private intentions of that party at the expense of discerning what was actually agreed."

87. There is a longstanding principle of common law that an employee cannot be transferred from one employer to another without her consent: **Nokes v Doncaster Amalgamated Collieries Ltd** [1940] AC 1014.

88. This principle was reaffirmed in the case of **Gabriel v Peninsula Services Ltd** [2012] UKEAT/0190/11/MAA, where HHJ Peter Clark confirmed that at common law, a contract of service could not be novated by substituting a new employer without the express or implied consent of the employee. Consent may be implied from conduct.

89. The principle that a contract of service may not be novated by substituting a new employer without the express or implied consent of the employee can be avoided by clear legislation. There is such legislation, in the form of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE').

90. Regulation 4 TUPE provides that:

- (1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.**
- (2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer –**
 - (a) All the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee....**

91. By virtue of the Pensions Act 2008, subject to certain eligibility criteria and exemptions, the details of which are unimportant, all employers must provide a workplace pension scheme, known as 'automatic enrolment'. The employer and the worker must pay a minimum percentage of the worker's earnings into her workplace pension scheme.

Submissions

92. Mr Wiltshire submitted that the key issue is who was the employer as at 04 April 2022. The answer to that, he submitted, does not have to be the same in the case of all three claimants, albeit he submitted that in fact it was. However, if I were to find that one claimant was employed by R1, it does not follow that the others must also necessarily be found to have been employed by the same company.

93. Mr Wiltshire accepted that, in principle, an employee may be employed by company A even though the payment of remuneration is made, by arrangement, by company B. However, he submitted that is not this case. He submitted that:

93.1 All claimants were paid by Global;

93.2 Workplace pensions were in place with Global identified as the employer and making contributions;

- 93.3 There was a division between R1 and R2 and there was uncontested evidence that Global was paying rent on Vanguard Suite room where the Claimants worked;
- 93.4 Documents in the case of Mrs Bradley and Ms Atkins (attachment of earnings/court correspondence) suggested that they realised their employer was Global;
- 93.5 The Claimants applied to the Insolvency Service for payments in respect of the liquidation of R2, declaring the employer to be Global.
94. Mr Wiltshire submitted that, although he could not shy away from the existence of written contracts with R1 in the case of Mrs Bradley and Ms Atkin, everything else pointed in the direction of a contract of employment with R2. He relied on the evidence of Ms Chippendale to the extent that she 'would have' told Ms Chippendale about transferring to R2 and they 'would have' reached an agreement for her to transfer.
95. the employer of Mrs Bradley was initially R1 but that, in 2013, there was an agreement between her and Mrs Bradley that her employment would transfer to R2.
96. He submitted that the fact that the claimants thought they were employed by R1 is not determinative.
97. The Claimants maintain that they were employed by R1 and that at no point did they ever agree to work for Global. They were aware that payments were made by Global but this meant nothing other than that the money used for paying their wages was paid out of a different pot, which they were told not to concern themselves. They submitted that all employees should know who they were employed by; that the respondents are trying to mislead and they did not believe that the truth had been told

Discussion and conclusion

98. It is an unusual feature in employment litigation that the employees are able to produce contractual documents whereas the employer produces nothing: not a letter of offer, not a contract, not a written statement of particulars. Mrs Bradley and Ms Atkin had copies of their written contract showing their employment to be with R1. R1 asserts that R2 employed all of the Claimants, yet Ms Chippendale, a director of both companies, produced no contractual documents to support this. She relied references to R2 on bank statements, payslips and pension documentation not sent to the employees. Ms Chippendale, in her evidence, said that the absence of documentation is down to her acrimonious divorce with Mr Wilkinson. An acrimonious divorce there may have been, however, I do not accept that to be a good explanation or excuse for the non-production of documentation. Indeed, I do not accept it as a genuine explanation. Mr Wilkinson continued to manage the operations in Middlesbrough, whatever the relationship between him and Ms Chippendale. In any event, Ms Atkin's evidence was that Mr Mulvaney took all employee documents away in March after Mr Wilkinson's day-to-day

management ended, to give to Ms Chippendale, which I accepted. Mr Wilkinson was involved in running the business up to **January or February 2022**. As I have already observed, I found Ms Chippendale to be an unreliable witness. I have found that documents were in existence relating to employment of staff working in Middlesbrough and that they were taken from the office at Vanguard Suites after Mr Wilkinson was actively involved in March, as Ms Atkin says. The inference I draw from this is that Ms Chippendale was trying to keep the true picture of the employment of the claimants from proper scrutiny.

99. Mr Wiltshire, in submissions, referred to Ms Chippendale's evidence on the payment of rent for certain premises point being unchallenged. However, that evidence was elicited for the first time in evidence in chief without any supporting documentary evidence. There was no reference to it in Ms Chippendale's witness statement, which had been served late on the Claimants **after** they had sent their statements to R1. I was generous to R1 in permitting **any** supplemental questions in such circumstances. Therefore, when Mr Wiltshire submitted that the evidence as to which company was responsible for the cost of the various premises was 'unchallenged' evidence, I took that with a pinch of salt, given the inability of the Claimants to deal with matters raised 'on the hoof' so to speak.

Were the claimants 'employees'?

100. There is no dispute that the Claimants were employees within the meaning of section 230 ERA 1996. The only issue is as to the identity of their employer immediately before their employment was terminated.

Written contracts

101. In the cases of Mrs Bradley and Ms Atkin, I take as my starting point the written agreements drawn up at the inception of their employment: applying the principles derived from **Autoclenz** (see paragraph 86c above).

102. I have no doubt that the agreements in their cases reflected the intentions of R1 and of those claimants that their employer within the 'Flawless family' was and would be R1. There is no ambiguity about the document. My findings of fact are also entirely consistent with the existence of a contract of employment between R1 and Mrs Bradley and Ms Atkin. In any event, it is (belatedly) conceded in Ms Chippendale's witness statement that R1 did employ Mrs Bradley. Oddly there is no such concession in relation to Ms Atkin. However, she too has a written contract identifying R1 and I am satisfied that it genuinely reflects an intention in October 2021 that her employer was and would be R1.

103. I conclude that Mr Wilkinson always regarded the Claimants to be employed by R1. On the other hand, Ms Chippendale was, in my judgement, indifferent to the position. Mr Wilkinson was himself an employee of R1 (the most senior) and he managed R1's operations in Middlesbrough, something which Ms Chippendale has nothing to do with. The inference I draw from the finding in paragraph 25 is that Mr Wilkinson regarded the office staff (telesales) as being employees of Flawless Makeover Studios Ltd and not 'Global'. I have considered but rejected the suggestion that he was simply referring to the brand name, as Mr

Wiltshire suggests. Taking my finding in paragraph 25 along with other findings, it is in my judgment an appropriate inference to draw. Those other findings include: para 24 (absence of 'Global' signage – contrary to R1's case); para 26 (advertises to recruit staff to 'Flawless' not 'Global'); para 34 (taking of direction from Mr Wilkinson); para 35 (reassurance that reference to 'global' nothing to worry about, just a different pot); paras 55 and 56.

104. It is, therefore, significant that Mr Wilkinson and Mrs Bradley and Ms Atkin all considered themselves to be employees of R1. Although highly unlikely, it is possible that employees might be employed by Company A, even though a shareholder/director and the employees themselves mistakenly believed the employer to be B. I emphasise that such a situation would be highly unlikely. Unlikely as it is, I have considered it but rejected it. First of all, I do not accept that there was any mistaken belief on anyone's part. Not only did the Claimants believe the employer to be R1, they did not agree to be employed by R2. Further, as regards R1's interactions with the claimants, the shareholders and directors knowingly acted at all times to give them the impression that R1 was their legal employer. It would be an invidious position for any employee to be in, were such shareholders and directors entitled, later, on the termination of their employment to say to those employees that their employer was in fact another company, which was now going into liquidation. That is an unconscionable position to adopt.

105. It is necessary to examine the cases of the three Claimants separately. As Mr Wiltshire submitted, the answer to that question may differ as between them. I consider them in the following order: Mrs Bradley, Ms Atkin and Mrs Taylor.

Mrs Bradley

106. As indicated, the starting point for Mrs Bradley is that it is now – belatedly – admitted that she had been employed under a contract of employment by R1. That being so, if I am to conclude that she was, as of **04 April 2022**, employed by Global, something must have changed to effect a transfer of her employment from R1 to R2.

107. There has been no automatic transfer of her employment under TUPE, as is now conceded. In light of the authorities (**Nokes v Doncaster Amalgamated Collieries Ltd** and **Gabriel v Peninsula Services Ltd**) the consent of Mrs Bradley is required for her to have moved from R1 to R2 or for her contract to have been novated. I have found as a fact that there was no discussion or agreement made with Mrs Bradley that she would move from R1 to R2. She did not expressly consent to change employer.

108. What then of implied consent? I have considered whether the matters relied on by Mr Wiltshire are sufficient to demonstrate implied consent to the transfer of her employment either in 2013 or at any time thereafter, prior to **04 April 2022**: the discovery and ongoing recognition that Global was paying her wages into her account, the reference on payslips to Global (on those occasions when she saw payslips), the existence of a workplace pension in the name of Global, the email exchange with Dan from Triage and the application for payment

from the Insolvency Service in the liquidation of R2. In my judgement, however, they do not, either taken separately or together demonstrate implied consent. Mrs Bradley always believed she was employed by R1. She had expressly raised a concern when she noted Global appearing on references in her bank statement and on payslips. She was told not to worry about it. While she was aware that a workplace pension scheme had been introduced in about 2017, she did not know or understand the intricacies. She was not sent the correspondence which is in the bundle on which the Respondent relied. This correspondence was sent to Mr Wilkinson and Ms Chippendale and never received by Mrs Bradley until she started asking questions of Now Pensions in March 2022. I did not accept that she identified Global as her employer to the courts in respect of the attachment of earnings order. She regarded others, such as Ms Atkin as being employed by R1 and believed that she was recruiting staff to work for R1, the same business that employed her. That is hardly consistent with her having agreed to be employed by R1. The circumstances relating to Lauren Whitehead were specific to her.

109. As to the application to the Insolvency Service, Mr Wiltshire put to Mrs Bradley that she either made a dishonest claim or she was fully aware that her employer was Global.

110. I did not accept either of Mr Wiltshire's propositions. Firstly, as to the making of a claim dishonestly: when her employment was terminated on **04 April 2022**, she was told for the very first time that she was not employed by R1, that her employer was R2, which was to be liquidated and that she should apply for outstanding monies from the state. This came as a surprise to her. In circumstances where she is told that she is not employed by R1, that she should contact the liquidator if she is to claim any money through the Insolvency Service, where she has said she was employed by R1 and apparently moved without her knowledge, and where she is left unemployed with no payments, I do not accept that Mrs Bradley was making a dishonest claim. She was simply responding to the difficult circumstances she found herself in. In any event, this was after the termination of her employment and I did not accept that it indicated (alongside the other matters) any acceptance of a transfer of employment from R1 to R2 at any earlier point in time.

Ms Atkin

111. The issue is whether, during her second period of employment, she was employed by R1 or R2. However, the facts relevant to her first period of employment have some relevance. At all times during the first period of employment, Ms Atkin was employed by R1. Much of what I set out above in relation to Mrs Bradley applies to Ms Atkin's employment. She was employed in 2013 when – and just as Mrs Bradley had done – she noticed that Global was appearing on bank statements. Also, on the occasion when she saw a payslip, she saw that its name was on the payslip. However, she too was reassured by Mr Wilkinson (that it was nothing to be concerned about, that it was just money from a different pot. She did not agree to transfer her employment in 2013. To the extent that Ms Chippendale suggested that she came to Middlesbrough to have a meeting and that all employees 'would have' agreed to transfer I have rejected that evidence as being unreliable and untruthful. Nor, for the same reasons as apply to

Mrs Bradley, did she impliedly consent. Therefore, at all material times during her first period of employment she was employed by R1.

112. When she returned for her second period of employment, she was given a contract of employment with R1. Therefore, I must take that as my starting point. As Mr Wiltshire accepts, he cannot shy away from that. The contract is not signed but that is only because the original was retained by R1. As far as she was concerned, the situation on return had not changed when she returned for her second stint of employment. The fact that Global again appeared on payslips and bank statements meant nothing to her. Mr Wilkinson had previously explained it was simply money from a different pot. She sent him her bank details in October 2021 and at no point did he, or anyone else, say to her that she was employed by Global and that the contract she had been issued was in some way an error. The contract of employment identifies R1 as the employer. Everything pointed towards her employer being R1. The only thing that can be relied on by R2 is the payment from Global bank account and the reference to Global on payslips and pensions documents.

113. As with Mrs Bradley, there was no express consent on the part of Ms Atkin to change her employment from R1 to R2 during the first period. Although not part of Mr Wiltshire's submissions, I also asked myself whether, during the second stint, there had been any implied consent to move from R1 to R2. For the same reasons, I have concluded that there was no implied agreement for her to change her employment at any point from October 2021. She did not know about Global being identified as the employer on the pensions documentation and the unexplained reference to global on the court correspondence, I had found was not down to anything Ms Atkin wrote. I apply the same reasoning and arrive at the same conclusions in relation to the application for payment from the Insolvency Service.

Mrs Taylor

114. Mrs Taylor's position is different, in that she did not have a written contract of employment from either R1 or R2. However, she applied for a job with an employer which she understood to be called Flawless Makeover and Photography. She did not understand the intricacies or subtleties of corporate structures but understands that on a day-to-day reference, every reference to her working life was to 'Flawless'. While I accept that this is a reference to the 'brand' nevertheless it is closer to Flawless Makeover than to Global and I draw the same inference as I do in the other cases, that the intention was that her employer be Flawless Makeover Studios Ltd. Just as in the cases of Mrs Bradley and Ms Atkin, the day-to-day operations were managed and controlled by Mr Wilkinson, Operations Director of R1 and to the Claimant and to the outside world, her employer was R1. The Respondent's reliance on references to Global on bank statements and payslips I have considered but rejected as evidencing an agreement to be employed by R2. I have found that no payslips were sent to Mrs Taylor.

R1's pleaded case

115. In its response, R1 pleaded that Mrs Bradley and Ms Atkin had never been employed by R1. It added that R1 has never had any operations in Middlesbrough and that the offices in which the Claimants worked all had the name Global. None of those things is true. In my judgement, this is not down to some innocent misunderstanding on the part of Ms Chippendale or Mr Jones. The pleading is misleading. I have drawn this conclusion from the very cogent evidence given by the Claimants, in particular Mrs Bradley and Ms Atkin about the operations in Middlesbrough, the signage that was displayed (and not displayed, as the case may be) the existence of written contracts and the unreliability of Ms Chippendale's evidence. I had the very distinct impression that Ms Chippendale regarded it as an inviolable right on her part to 'place' employees in whatever corporate structure she chose, without informing or consulting with the employees up front. They were 'fobbed off' by being told not to worry when they noticed 'Global' featuring in the payment of their wages. They did not see it as being fobbed off at the time because they trusted Ms Chippendale and Mr Wilkinson and at the time had no reason to be concerned if the money was simply coming from 'a different pot'.

116. It is, as Mr Wiltshire accepted, perfectly feasible for one employer (A) to arrange for another company (B) to facilitate and make the payment of wages of employees of A. When the companies are owned and managed by the same shareholders and directors why, I ask rhetorically, would an employee question this – especially, employees who are not familiar with the intricacies of separate corporate identities. That is precisely what happened here in my judgment: R1 arranged for R2 to pay the Claimants' wages. I have no doubt that this arrangement suited Ms Chippendale and Mr Wilkinson at the time, as it did when – compelled by law to set up a workplace pension scheme – they did so under the guise of R2 as 'the employer', without informing or consulting the employees. In this respect, they operated in an opaque way and, as far as I can see, were playing fast and loose by obscurely blending the various corporate identities together and believing that they had the facility surreptitiously to move employees without their consent or knowledge from one corporate entity to another, so that they would be off one set of books and onto another. Ms Chippendale sought to take advantage of this on **04 April 2022**, for the very first time, she declared R2 to be their employer, leaving the Claimants – if they wished to obtain notice pay, arrears of pay/holidays or redundancy pay – to pursue any claim against the Insolvency Service. However, having analysed the factual matrix and heard from the Claimants and Ms Chippendale, I am satisfied that were and remained employees of R1 up to the date of termination of their employment.

Employment Judge Sweeney

16 November 2022