# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms M Beach**

**Respondent:** **Hair at Two Ten Limited**

**Heard at:** Birmingham (Hybrid- by CVP with the claimant attending at the Tribunal)

**On:** 2 October 2023

**Before:** Employment Judge Flood

**Appearances**
For the claimant: In person
For the respondent: Mr Hufton (lay representative and husband of the director of the respondent) and Mr Gilbert (legal representative)

# RESERVED JUDGMENT ON PRELIMINARY HEARING

The claimant was an employee of the respondent within the meaning of section 230 Employment Rights Act 1996.

# REASONS

## Background and events during the hearing

1. The claimant presented a claim form on 13 June 2022 making complaints of unfair dismissal, pregnancy and maternity discrimination, notice pay, unpaid wages and unpaid holiday pay. The respondent presented a response alleging that the claimant had not been employed by the respondent and had been engaged on a self employed basis. On 24 January 2023, the claimant's complaint of unfair dismissal was dismissed as (irrespective of employment status) she would not have had sufficient length of continuous employment to bring that complaint. The respondent also denied that the claimant had been dismissed. The claimant's other complaints were also denied.

2. The matter was listed for a preliminary hearing in public to determine the issue of the claimant's employment status.

3. The matter came before me today. The claimant attended at the Tribunal in Birmingham with the Judge and respondent attending by CVP video hearing. I had before me a bundle of documents prepared by the claimant together with

some additional documents supplied by the claimant by e mail on 26 September 2023, including a witness statement prepared by the claimant, a statement of loss, further dated copies of the job advertisement the claimant saw and copies of text messages between the claimant and another stylist at the salon, Fay. There had been some difficulties in the preparation for the hearing. The respondent alleged that the claimant had not co-operated or contacted them to discuss the contents of a bundle. The claimant accepted that there had been some delays but that these had been caused by some severe difficulties in her home life which meant she was forced to move several times at short notice. The respondent confirmed that it was content to proceed with the hearing on the basis of the documents prepared and submitted by the claimant so on this basis I proceeded.

4. There were some difficulties getting the hearing started as the claimant indicated that she wanted to make an application in respect of what she described as the respondent's "*contempt of court*" relating to conduct at the last preliminary hearing held on 23 January 2023. This is referenced at paragraph 4 of the case management order of Employment Judge Harding sent to the parties on 23 January 2023. The claimant became argumentative and was insistent that action must be taken and made reference to making an application using a form she alleged had been sent to her by the Tribunal administration (a form N244) and wanted her application to be considered by "*a more senior judge*". The claimant spoke over me and the other party and at times made inappropriate allegations about the respondent (which she subsequently apologised for) and criticised the Tribunal and its staff. The claimant suggested that I was condoning the respondent's conduct by failing to take action and she felt she would not get a fair hearing. She complained about the presence of Mr N Tufton (the husband of the owner of the respondent business) again at today's hearing and suggested that he should be prevented from appearing. I suggested that given the difficulties we were having, it may be sensible to adjourn entirely today and deal with the matter of employment status at the final hearing which would take place with everyone attending in person. The claimant was unhappy with this suggestion, given difficulties she had in arranging childcare for today. It was necessary to take a short break to try and resolve matters.

5. There was then a case management discussion which took place with the claimant and the respondent's recently appointed legal representative Mr Gilbert. Mr Gilbert had just been appointed that morning so was not intending to represent the respondent at today's hearing but was rather there to provide initial assistance. He agreed to enter into a case management discussion in the absence of the respondent on their behalf to try and alleviate the claimant's concerns and resolve matters. I explained to the claimant that the respondent was free to be represented by whomever they chose at this hearing, which was a public hearing. Irrespective of what took place at the previous hearing, the presence of Mr Tufton today was not inappropriate. I also explained to the claimant that Form N244 was not a document in use at the Employment Tribunal (and appeared to be a document related to the County Court) but that the procedure applicable to the Employment Tribunal was to be found in the Employment Tribunal Rules of Procedure 2013 ('ET Rules'). I referred the claimant to rule 37 of the ET Rules and explained that it was open to her to make an application relating to the conduct of the respondent if she was of the view that the manner in which proceedings had been conducted had been "scandalous, unreasonable or vexatious". Mr

Gilbert suggested that the claimant's behaviour both at the previous and current hearing had crossed the threshold of being unreasonable conduct. I explained that any such application under rule 37 would be considered by the Tribunal and representations of both parties would be considered. I encouraged the claimant to seek legal advice about making such an application and referred her to the Tribunal's Sources of Advice leaflet. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:

https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/

The Employment Tribunals Rules of Procedure are here:

https://www.gov.uk/government/publications/employment-tribunal-procedure-rules

You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: https://www.gov.uk/appeal-employment-appeal-tribunal

6. Following this discussion and after a further short break, the parties were content to continue with the preliminary hearing to determine the issue of employment status. The claimant gave evidence as did Mr N Tufton and Mrs D Tufton on behalf of the respondent. The hearing was adjourned at approximately 4.15 pm following submissions and I informed the parties that I would reserve my decision.

## The Issues

a. Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

b. Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

c. Was the claimant within the "employment" of the respondent as defined in section 83 of the Equality Act 2010?

## The Relevant Law

7. The relevant sections of the Employment Rights Act 1996 ('ERA') applicable to this claim are as follows:

*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;*

*and any reference to a worker's contract shall be construed accordingly.*

8. The relevant sections of the Equality Act 2010 were as follows:

*"83 Interpretation and exceptions*

*(1) This section applies for the purposes of this Part.*

*(2) "Employment" means—*

*(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;….."*

9. The following relevant authorities were also considered:

Ready Mixed Concrete (SE) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433 defined a contract of service as involving these components:

"*A contract of service exists if these 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."*

Carmichael v National Power plc 1999 ICR 1226 endorsed this view stating that certain elements formed part of an irreducible minimum – control, mutuality of obligation and personal performance.

In Autoclenz Ltd v Belcher [2011] IRLR 820 the Supreme Court held that the 'true intention of the parties' was not represented by the express declarations of self-employment in the written contracts of car valeters engaged by the Respondent. They supported the findings of the EJ that the true nature of the relationship was one of employment. The clauses stating otherwise were in effect sham provisions. The key question for the Tribunal was what is the true agreement between the parties:

*'the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned*

*from all the circumstances of the case, of which the written agreement is only a part'.*

Richards v Waterfield Homes Ltd and another [2022] EAT 148 the EAT (on appeal to the CA) ruled that even where the worker had required to be paid under the Construction Industry Scheme, which applies only to the self-employed with associated tax benefits, a contract of employment could nonetheless be inferred from all the circumstances of the case.

Uber BV v Aslam [2021] UKSC 5 - the question of whether a person is an employee, self-employed or a worker is determined by assessing whether that person falls within the relevant statutory provisions *"irrespective of what had been contractually agreed. In short, the primary question was one of statutory interpretation, not contractual interpretation"*. This suggests a purposive approach.

Sejpal v Rodericks Dental Limited [2022] EAT 92 the Employment Appeal Tribunal reminded Tribunals that when determining whether an individual is a worker pursuant to s.230(3)(b) ERA, it is the statutory test that needs to be applied: "*Concepts such as "mutuality of obligation", "irreducible minimum", "umbrella contracts", "substitution", "predominant purpose", "subordination", "control", and "integration" are tools that can sometimes help in applying the statutory test, but are not themselves tests. Some of the concepts will be irrelevant in particular cases, or relevant only to a component of the statutory test. It is not a question of assessing all the concepts, putting the results in a pot, and hoping that the answer will emerge; the statutory test must be applied, according to its purpose."*

## Findings of fact

10. The claimant gave evidence and Mr N Tufton ('NT') and Mrs D Tufton ('DT') gave evidence on behalf of the respondent. The claimant had prepared a written witness statement and the respondent's ET3 response from stood as a written statement of evidence for both NT and DT. The witnesses were subject to cross examination from the other party and answered questions from the Tribunal. I make the following findings of fact:

    10.1. The respondent operates a small family run hair salon in Balsall Common. It employed 3-4 stylists at the time the claimant started to work there, in particular individuals referred to as Fay, Lemonte and Ben who were had all been employed under contracts of employment for a number of years. In addition DT worked as a stylist at the salon and NT assisted with administration and finance, although on an unpaid basis. NT also acknowledged that Ben carried out more of a managerial role assisting DT with the management of the salon as well as being a stylist.

    10.2. At some point prior to 25 November 2021, the respondent became aware that Ben intended to emigrate to Australia. The respondent contended that it advertised for a "Creative Director/Salon Manager" on 17 November 2021. It was not able to produce a copy of this advertisement. However the claimant had a copy of an advertisement to recruit for a new member

of staff and at page 63-65 of the Bundle, I was directed to a copy of an advertisement posted on social media on 25 November 2021. I was satisfied that this advertisement was the one posted by the respondent and which the claimant replied to and not any other advertisement. This stated as follows:

*"Job Description*

*We are looking for an ambitious, self-motivated Fully Qualified Senior hair stylist with a creative flair who wants to work hard to reach their full potential in their hairdressing career. The Applicant will have the benefit of a previous stylists clients due to them emigrating abroad and having worked for the salon for 11 years has a large client base to transfer over to the right member of staff. If your passion lies in creative work, in a friendly environment then 210 Salon could be the place for you."*

It went on to set out the professional requirements including the required qualifications and experience in hair cutting and colouring. It further stated the applicant should have:

*"good customer service skills and work well in a team."*

It went on:

*"Job description:*

*-Cutting hair for men, women and children. Offering a truly unique hairdressing experience.*

*-Giving in-depth bespoke consultations for every client needs from colour and cutting services, to various hair treatments stop*

• *providing an excellent customer service and building good relationships with clients.*

• *To work well within your team, being mindful of salon turnover and targets*

*What we can offer you:*

*Salary: Negotiable to be reviewed in three months*

*Hours: Negotiable to be worked flexibly from Tuesday to Saturday.*

*Holiday entitlement: 28 days per annum including bank holidays*

*Probation period: 3 months*

*To apply please submit your full CV and Covering Letter including all relevant hairdressing qualifications*

*we look forward to hearing from you*

*Job types: Full-time, permanent*

*Salary: from £10 per hour"*

10.3. The claimant applied for this role and on 26 November 2021 attended an interview at the respondent's salon. The respondent alleged that it became

apparent during this interview that the claimant would be unable to fulfill the managerial role carried out by Ben but that as they were impressed with her CV and presentation, they offered her a position of stylist. I did not accept this evidence and find that as a result of her interview the claimant was offered the role of Senior stylist. I find that at this time the precise working hours for the role had not been finalised, nor the amount of pay the claimant was received. I also find that it was intended initially that the claimant would just work on Wednesdays (as evidenced by the message sent to the claimant the following day – see below). The claimant appeared herself to acknowledge that during this initial discussion the intention had been that she would continue to work in her current position (as a self employed stylist at a Barbers shop called Tayper and Bella) on the days she was not working for the respondent.

10.4. Following this meeting, DH sent the claimant a text message at 20:01 on 26 November 2021 (shown at page 66 of the Bundle) which read as follows:

*"hi Maria, thank you for coming over to the salon this evening, it was great to meet you, everyone thought you were great and would fit in perfect, hope you had that vibe to, so would love you to join are hair family, will be in touch with you soon regarding Wednesdays ooh feeling excited, and so is everyone else, happy that you're be with us before Ben leaves up, hope you except, and I will talk to you regarding wages etc Monday probably…*

10.5. *The claimant responded to the text on 20:20 that same day and that message was shown at page 73 of the Bundle stating:*

*"awesome I really look forward to being part of your team and hope I do Ben proud so he can leave his clients in safe hands"*

With DH responding:

*"Aww bless its going to be sad to be honest I have the best team and are so happy to have you potentially on board….."*

DH then sent the claimant a further text message on 2 December 2021 (also at page 73) stating:

*"Hi Maria, hope you're ok can you do Fridays from next week as well, Ben's visa is no approved, so I'm keen on getting you familiar with his clients, times we can sort next week if you would prefer to start later on Wednesday not a problem say 10.30? Thoughts xxx"*

Although not absolutely clear from the order of printing in the Bundle, it appeared that the claimant responded to this message on 21:50 with a message stating *"Yeah cool xxx" (see top of page 67).*

10.6. Therefore I find that following a successful interview, the respondent and the claimant had agreed by exchange of messages as at 2 December 2021 that the claimant would work at the respondent's salon as a stylist for 2 days a week, Wednesdays and Saturdays to start the following Wednesday 8 December 2021. There was clearly an expectation that the claimant would start to take over clients of Ben and perhaps an

expectation that she take over his role when he left but nothing had been expressly agreed at this stage regarding this.

10.7. The claimant attended to work at the salon on Wednesday 8 December 2021. There was some dispute about this date. The claimant believed she had attended on Tuesday 7 December but accepted she could have been mistaken. The respondent believed this was Thursday 9 December pointing out that DH sent the claimant a text message which was dated Thursday 9 December 2021 checking that the claimant had got home, and stating: *"think today went well, and you had a nice day also, see you Friday and hope you love your new work family".* However I find that this message was sent to the claimant by DT at exactly midnight (as shown by the time of the message being 00:00) which would mean the date shown on the message had just changed to Thursday 9 December 2021. However we were satisfied that the reference to 'today' in that message was a reference to the previous day i.e before midnight and thus was in fact Wednesday 8 December 2021. This is also supported by the fact that the previous message sent by DT mentioned the claimant working on Wednesdays.

10.8. The claimant further attended work on Friday 10 December 2021 (as evidenced by messages on pages 68 and 69 referencing her arrival time).

10.9. The claimant gave evidence that on one of those 2 days she worked, she was "*shown around the salon, also shown holiday request forms and told the holiday period ran from April to March*". She later clarified in response to questioning that she may have been told that the holiday year was the financial year and so she assumed this was the same as the tax year. The claimant said she was shown the staff handbook and the first aid and injury log book. The claimant gave evidence that Ben provided her with what she described as a "*HMRC new starter checklist*" which she filled in straight away and handed back to him. She said it included matters such as her contact address, bank details, next of kin but there was also somewhere to add details of her tax code. She said she was unable to complete this and so she just provided her National Insurance number and her Unique Tax Reference number (which was relevant to her current status as a self employed stylist) and said she included the last tax code she could recall when she was employed which was 11000L.

10.10. The respondent denied that any of the above took place and contends that the claimant was simply given a tour of the salon and may have been shown the health and safety handbook (contending that it did not in fact have an employee handbook). It said that the claimant simply provided basic details of her bank account that she wished to be paid into but there was no new starter checklist. I find that the claimant was given a tour of the salon and as part of this certain things were pointed out to her, including where holiday forms were kept (and at this time was told that the holiday year was the financial year). I find that she was shown a handbook briefly but accept that this was not an employee handbook as such but was the health and safety handbook. I also accepted the evidence that the claimant did fill out some sort of form within which she included her bank

and contact details but also information about her tax status.

10.11. On 12 December 2021, the claimant sent a message to the manager at the salon she had been working at on a self employed basis, Tay at Tayper and Balla. This was shown at page 74-75. She informed Tay that she had been

*"offered a unisex position in Balsall Common (coincidentally a stylist is moving to Australia with a full clientele to take over)".*

She went on to state that she had worked two trial days and that :

*"the money is better for me as a single woman on one income and its also employed so I know were I am at month on month."*

She stated that she would be starting next week and would therefore be leaving Tayper and Balla.

10.12. The claimant gave evidence that she had a telephone conversation with DT shortly after sending this message where DT told her that due to issues around Covid that at that time she would only be able to offer the claimant two days a week at the moment but that this would only be temporary as Ben was leaving in March at such time she would take over his role full time. DT said she could not recall this telephone call but alleged that she told the claimant that whilst she was keen to have her come to work in the salon that she was unable to afford to offer her a full time position at this time whilst Ben remained employed. DT alleged that the claimant told her she had been self employed before and offered to work on a self employed basis for a temporary period. DT said that this was then agreed between her and the claimant with the claimant agreeing to become self employed for a period of 3 months and be paid £12 per hour.

10.13. I find that during this conversation it was agreed between the claimant and DT of the respondent that the claimant would continue to work as a stylist in the salon with a view to taking over from Ben when he left in March 2022 (at this time moving to working full time hours). I find that it was agreed that at the current time she would continue to work for a minimum of 2 days a week (but that additional hours could be offered if they became available). This is evidenced by the text message sent by the claimant the following day on 13 December 2021 (see below) which clearly states that only 2 days were committed to, albeit she was available to work extra if required. The rate of pay of £12 per hour was also agreed.

10.14. I also accept that the claimant's status as a self employed stylist at Tayper and Balla was discussed and there may have been some discussion about working on a self employed basis for the respondent. However on the balance of probabilities I find that there was no clear agreement as a result of this telephone conversation that the claimant would in fact work on a self employed basis for the respondent. DT may have been under the impression that this was the case but the claimant was not and I was not satisfied that this had been agreed between the parties at this time as the way that the arrangement would be conducted.

10.15. On Monday 13 December 2021, the claimant sent a message to DT of the claimant as follows:

*"All's done – officially have left T & P. Cleared all my stuff and now free for whenever you want me but no pressure on that I know we only committed to 2 days so any extra right now is a bonus"*

DT replied asking the claimant whether she could do Thursday that week as well as the Saturday to which the claimant replied that she could do any day during the week other than the following day (Tuesday 14 December) stating the reason for this was that she was going to see her dad (she told the Tribunal she was visiting him on the anniversary of the death of her mother). This supports the finding above that although two days a week were agreed, that it was also the case that agreed that if required, the claimant was willing to work other days as requested by the respondent on which she was free to work.

10.16. The claimant continued to work on this basis at the salon during December 2021. The claimant attended work at the hours provided to her by the respondent. She worked with those clients she had been allocated by the respondent who had booked directly with the respondent. Appointments were made and then she was asked to cover those. During the day if she was not allocated a client, she would carry out other activities in the salon such as sweeping up, cleaning, working on reception, answering phone calls, assisting with hair washing for other stylists, mixing colours and organising towels and products. She worked from the respondent's premises, using its equipment such as chair, hairdryer, straighteners, combs, hairbrushes, towels, gowns, aprons, hairclips etc. The claimant had her own personal kit roll containing her own scissors and a cutthroat razor and hand razor (and we accepted that this was common for hairdressers irrespective of their employment status).The hair products she used were chosen by and supplied by the salon. The claimant was not charged any fees for the use of equipment or products or access to clients (unlike arrangements that the claimant referred to where hairdressers would effectively rent 'a chair' at a salon where they would service their own clients from). She did not wear a uniform for the salon but wore all black clothes.

10.17. The respondent suggested in its ET3 response that it has been agreed that "*the claimant would submit her timesheet on a monthly basis and be paid into her nominated bank account without any deductions*" . During the hearing NT produced a blank copy of a timesheet and suggested that this had been completed by the claimant which she denied. I find that the claimant did not at any time complete a timesheet of the nature suggested by the respondent or any other timesheet. The claimant attended to work on the days agreed between her and DT by text message or phone call. At pages 71-72 the Tribunal saw examples of messages passing between the claimant and DT arranging the days upon which she would attend for work. At page 71 in particular I was shown a copy of messages on 29 December 2023. The claimant asked what time she was expected to work on Friday and also whether that was the only

day she was due to work that week. DT responded that she was also expected to attend work on Thursday that week. The claimant responded stating that she was "down south" at the time but was happy to travel back and DT responded by saying "*ok don't worry if you want to stay just let me know".* It is clear that the precise days to be worked by the claimant in any week were subject to agreement between the claimant and the respondent and these days varied from week to week. It was not necessary to determine the precise days and hours worked by the claimant during this period for the purposes of this preliminary hearing.

10.18. The claimant did not make any requests for holiday during her period at the salon and thus did not complete a holiday form.

10.19. The claimant was paid by direct transfer to her bank account at the end of each month. The respondent worked out the days she had worked and paid the claimant the sum of £12 for each hour on these days (without any deduction for tax and national insurance). The sums were paid directly to her bank account (see message at page 72). The fees paid by clients for the services the claimant supplied were paid directly to the salon and the claimant had no direct financial reward based on the number of appointments or value of fees charged. The claimant was not issued with any payslips nor was any written contract of employment or letter of appointment provided to her at any time.

10.20. It is clear that there was an expectation that when Ben left his employment that the claimant's days and hours would increase, albeit I find that this was never expressly agreed. DT and NT agreed that they believed the claimant to be working a trial period on a self employed basis with the intention that at the end of that period, if everything went well that the claimant would then be offered a full time role. They mentioned the possibility of holding of a meeting where the claimant's performance would be assessed and discussed. The claimant insisted that this was labelled as an 'appraisal' by NT but whatever was intended, this meeting did not in fact ever take place. I find that the claimant was aware that she was working some form of trial period (as evidenced by her e mails to Fay where she referenced he feeling that she would be 'let go'). However I do not find that the claimant was working under the impression that this was on a self employed basis.

10.21. There was some discussion during the hearing about whether the claimant was able to send an alternative person (or substitute) to cover the hours to be worked if she was unavailable to do this. DT suggested initially that this would have been acceptable but ultimately NT confirmed that this was not the case stating that it would not be acceptable for someone who the respondent was not satisfied had the skills and experience to carry out the skilled work required to be sent in the claimant's place. I accepted that this was in fact the position. The claimant never asked to send a substitute to work her hours and this never took place during the time at the salon.

10.22. The precise details leading to the claimant stopping working at the salon on or around 25/26 February or 1 March 2022 are not directly

relevant to this preliminary hearing and will be determined at the final hearing. However on 1 March 2022 the claimant e mailed DT asking for the holiday pay she had accrued to be paid and directed DT to the government website where there was a calculator to work it out. DT responded the same day stating:

*"…you're not entitled to holiday pay as your self employed and pay your own tax and national insurance,.."*

To which the claimant replied:

*"I didn't realise I was self employed I thought I was employed hence my asking for the pay".*

**Conclusion**

11. To determine whether the claimant was employed under a contract of employment, within the meaning of section 230(1) ERA, I have considered the statutory wording and the guidance from the authorities above. There was no written contract of employment between the parties. Therefore I had to consider evidence about what was agreed at the time and about how the arrangement operated in practice throughout this period, irrespective of how either party labelled the arrangement of indeed the method of payment for work done. The claimant applied for a specific position advertised (see paragraph 10.2). She was interviewed and was selected to work as a hair stylist at the salon on the basis of her qualifications and personal attributes (see paragraph 10.3). She performed the role herself and did not and in reality could not have sent a substitute to carry out the work on her behalf (see paragraph 10.21). In return for this work carried out the claimant was paid an hourly rate of £12 (see paragraph 10.13 and 10.21) The first requirement of the Ready Mixed Concrete test is therefore satisfied, there was an agreement (albeit verbal) by which the claimant agreed to work personally as a Stylist in consideration for a remuneration.

12. The next requirement is for there to be a sufficient degree of control. In my view, that requirement was met throughout this period the claimant was working for the respondent as supported by my findings of fact at paragraph 10.16 above. She was required to carry out such duties as DT on behalf of the respondent required including working on those clients allocated to her and carrying out other duties in the salon when no client was allocated. Although there was flexibility as to when she worked over and above the two days initially agreed (see paragraph 10.17), she worked on such days that the respondent required her to and worked broadly to the instructions of DT in carrying out her duties.

13. I have gone on to consider whether the other features of the relationship were consistent with there being a contract of employment. Looking at the overall picture, I was satisfied that the claimant was an employee. Findings of fact at paragraphs 10.6 to 10.22 that support that conclusion are:

    13.1. There was an agreement in place that the claimant would initially work the same two days each week (Wednesdays and Fridays) albeit in practice these days were subject to flexibility on both hers and her

employer's behalf. She was expected to carry out a fixed number of hours in return for an agreed rate of remuneration. There was clearly an expectation that she would attend work on the days that she had been asked to work.

13.2. She was treated by the respondent as being part of the 'team' which DT referred to as the 'work family'. She was clearly part of and incorporated into the structure of employees working at the salon

13.3. The claimant operated from the premises of the respondent and used its equipment (save for her individual kit roll) and products. This was the same as all other employed stylists at the salon. She was not charged for the use of equipment, products etc.

13.4. No invoices or timesheets were ever requested or submitted by the claimant to support self-employed status. The job advertisement the claimant responded to made reference to salary and DT sent messages mentioning wages. This is not consistent with a truly self employed relationship.

13.5. The claimant was paid a fixed hourly rate for working at the salon and this did not vary depending on the nature of work carried out. There was no element of risk and reward in the relationship as the claimant would still be paid the same rate whilst present at the salon irrespective of whether she was carrying our hairdressing or other duties. There was no direct correlation between what work she did and the amount of money earned which might have been the case had she been truly self employed.

13.6. The job description attached to the advertisement the claimant responded to stated that there was a holiday entitlement and the claimant was provided with basic information about taking holiday on commencement of employment, albeit that no such holiday was ever requested or taken.

13.7. The job description made reference to a probationary period and DT was operating this period as a trial period to determine whether the claimant would be retained permanently. This is more akin to an employment relationship than to a truly self employed status.

14. I have in contrast considered the key factors that point towards the claimant having some status other than that as an employee. This is largely that the respondent regarded her as working on a self employed basis and accordingly no deductions were made for PAYE tax or employees' national insurance contributions as she was not on the payroll. However it is clear from my findings of fact that the claimant did not in fact regard herself as self employed (see paragraph 10.11, 10.20 and 10.21). Ultimately as was the case in the Richards v Waterfields home case above, the act that self-employed tax arrangements were in place between the parties does not necessarily mean that a contract of employment was not in place. A purposive approach is required and I conclude that this was only one aspect of the arrangements and did not mean that a contract of employment was not in place.

15. I conclude therefore that the claimant did work under a contract of employment within the meaning of section 230(1) of ERA and was an employee of the respondent from the commencement of her employment on 8 December 2021 until it terminated with effect on either 25/26 February or 1 March 2022. She was necessarily a "worker" during this period as well and within the "employment" of the respondent as defined in section 83 of the Equality Act 2010.

16. The claim will now be listed for hearing to determine whether the complaints of pregnancy and maternity discrimination, breach of contract (notice pay), unlawful deduction of wages and unpaid holiday pay are made out.

**Employment Judge Flood**

5 October 2023