**Case No: 2300434/2023**

# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M Smith

**Respondent:** Royal Borough of Greenwich

**Heard at:** London South (remote hearing) **On:** 20 October 2023

**Before:** Employment Judge B Smith (sitting alone)

**Representation**
Claimant: In person
Respondent: Mr T Lester (Counsel)

# PRELIMINARY HEARING IN PUBLIC JUDGMENT

1. The claimant was a worker of the respondent at the relevant time.

2. The claimant was not an employee of the respondent at the relevant time. The complaint of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to determine it.

3. The claimant was not an employee of the respondent at the relevant time. The complaint for notice pay is therefore dismissed because the Tribunal does not have jurisdiction to determine it.

4. The complaint in respect of holiday pay was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint in respect of holiday pay is therefore dismissed.

5. The complaint in respect of other payments for in breach of contract relating to expenses between September 2018 and September 2019 was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint in respect of other payments is therefore dismissed.

# REASONS

Introduction

1. At the start of the hearing it was confirmed that the claimant makes complaints of unfair dismissal, in respect of holiday pay, for notice pay, and for other payments. These other payments are in respect of unpaid expenses for a BT telephone contract between September 2018 and September 2019. The claimant confirmed this specification of the 'other payments claim' at the start of the hearing. In an email dated 21 September 2023 the claimant suggests that this is a breach of contract claim.

2. A public preliminary hearing was listed by notice of hearing dated 22 May 2023 to determine the claimant's employment status and whether the claims she brought were in time. The issues were outlined at the start of the hearing and agreed by the parties.

3. ACAS were notified by 20 January 2023 and the certificate was issued on 23 January 2023. The claim form was presented on 26 January 2023.

Documents and procedure

4. During the hearing the claimant gave evidence under affirmation and was cross-examined. I heard oral submissions from the respondent who also relied on a skeleton argument dated 20 October 2023. The claimant objected to the timing of when this document was sent. However, I do not find that she was unfairly prejudiced by this. This is because there was nothing substantive that was raised in the document that did not form part of the respondent's case. Contrary to the claimant's written submissions, the skeleton argument simply contains the respondent's arguments in writing. It is not late evidence. Also, nothing would have been achieved had I refused the respondent permission to rely on the written skeleton argument but had simply permitted oral submissions containing exactly the same information.

5. I refused the claimant's application at the start of the hearing to postpone the hearing on the basis of the time that the respondent served their skeleton argument. This is because further delay would be contrary to the interests of justice. It would also not further the overriding objective. The respondent's skeleton argument did not raise new or wholly unanticipated legal points which would justify a postponement. The fact that the Tribunal would be considering whether or not the claims were out of time and employment status was clearly indicated in correspondence before the time of the hearing. I was also satisfied that the claimant had sufficient time to take any legal advice she may have needed before the hearing. Also, the main part of the skeleton argument that the claimant objected to (ie. the respondent's contentions as to the timing of the end of the relationship) were more than adequately dealt with by the claimant during the hearing and in her written submissions. This point was also not determinative of the issues.

6. In any event, out of fairness to the claimant, I gave permission for her to put her closing submissions in writing. The claimant had from the end of the hearing on

Friday morning, the weekend and until 4pm on the following Monday to do this. This was an appropriate remedy to any prejudice the claimant might have suffered arising from the timing of service of the respondent's skeleton argument and any potential lack of time during the hearing to respond. The claimant did not during the hearing suggest that this was insufficient time to respond. The claimant's written submissions were dated 23 October 2023 and I took these into account. The claimant provided additional documents with her submissions. However, having seen those documents, they would not have been determinative of the issues in any event. Although the claimant indicated in her written submissions dated 23 October 2023 that she intended to send further submissions after the deadline because of a family emergency (unspecified), I did not receive any further submissions. However, I am satisfied that the claimant's position is clearly set out in the extensive written submission-type documents that were included in the bundle.

7. During the hearing I considered a documentary bundle of 251 pages in PDF paginated to D119, with a blank Section E as the final page. During the hearing the documents were confirmed to be those that I needed to take into account. The hearing was held remotely with the agreement of the parties and no adjustments were required. During the hearing I gave the claimant additional time to read the respondent's skeleton argument at her request. This included an additional 30 minute reading break and, later, a further 20 minute reading break. Although the claimant did not produce a formal witness statement, she confirmed under affirmation that her account at A17 and B15 in the bundle was true to the best of her knowledge and belief and this was treated as her witness evidence without objection by the respondent.

8. Although the claimant sought to argue in her written submissions that she was prejudiced by the late service of the bundle, I do not accept this. This did not expressly or clearly form the basis of her oral application to postpone during the hearing. The vast majority of the documents were already known to the claimant before the bundle was finalised. Also, she had a reasonable period before and after the hearing to consider any new documents in the bundle and make any submissions in writing after the hearing in accordance with my directions. This includes sufficient time to consider any new email evidence that was in the bundle. In any event, as will be clear from my reasons below, the most important evidence which supports my decisions is the claimant's oral evidence, the claimant's own written evidence, the claimant's own letters of complaint to the respondent, and the 2016 terms and conditions. No postponement on the basis of the timing of the service of the bundle would have been justified, and any such postponement would have been contrary to the overriding objective. This is even more the case in light of the claimant having additional time after the hearing to make written submissions.

9. In light of the claimant having raised the issue in her written submissions, whether or not the respondent lawfully responded to her data subject access request is not a matter for this Tribunal. I did, however, take into account what documents the claimant had access to, and when, in making my decision. I add, also, that the respondent did not contend that there was any specific self-employed contract in existence. I made my decision on the basis of the evidence available to me. Although the claimant argues in her skeleton argument that it was unfair that she could not cross-examine the respondent, this was because

the respondent did not call any witnesses. This did not render the hearing unfair. This is because is a matter for each side whether or not they wished to rely on witness evidence. I have taken into account the claimant's hypothetical questions as outlined in in written material when making my decisions.

Applicable Law – Time limits

10. The time limit for a complaint of unfair dismissal is three months starting with the effective date of termination (s.111 Employment Rights Act 1996 ('ERA 1996'). The same applies to unlawful deductions from wages claims and breach of contract claims (s.21(1) ERA 1996 and article 7(a) Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994). I may only extend time for these types of claims if it was not reasonably practicable for the complaint to be presented in time and the claim was presented within such further period as the Tribunal considers reasonable.

11. In *Cygnet Behavioural Health Ltd v Britton* [2022] EAT 108 it was held at [53] that '*A person who is considering bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so.'*

12. Where an unlawful deductions claim is brought in respect of a series of deductions or payments, time runs from the last deduction or payment, or the last of the payments so received (s.23(3) ERA 1996).

13. When looking at whether it was reasonably practical for the claim to be brought within time, I must give a liberal interpretation in favour of the employee, I must have regard to what, if anything, the employee knew about the right to complaint to a tribunal and the time limit for doing so, the knowledge they should have had, and whether they acted reasonably in the circumstances: *Marks & Spencer pls V Williams-Ryan* [2005] EWCA Civ 470. A complete ignorance as to rights may make it not reasonably practicable, but the ignorance itself must be reasonable. However, the test is not whether someone knows of their rights, but whether they ought to have known of them: *Porter v Bandrige Ltd* 1978 ICR 943.

Applicable Law – Employment Status

14. The definition of employee is covered by s.230(1) ERA 1996. This means

'*an individual who has entered into or works under … a contract of employment.'*

15. Applying s.230(2), contract of employment:

'*means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing).'*

16. The multiple test for determining the presence of a contract of service includes, using the language used in caselaw, that: an agreement exists to provide the 'servant's' own work or skill in the performance of service for the master ('personal service') in return for a wage or remuneration; in the performance of that service, the servant agreed expressly or impliedly to be subject to a sufficient degree of control form another to make that other their master, and

the other provisions of the contract are consistent with a contract of service: *Ready Mixed Concrete (South East) Limited v the Minister of Pensions and National Insurance* [1968] 2 QB 497.

17. A contract of employment cannot exist without the irreducible minimum mutuality of obligation and a sufficient degree of control: *Ready Mixed Concrete*. For a contract of employment to exist there must be an irreducible minimum of obligation on each side: *Carmichael and anor v National Power plc* [2000] IRLR 43.

18. Generally, if one of the factors of personal service and substitution rights, control, and mutuality of obligation are not met, there is no contract of employment. Even if there is a significant degree of control, if there is no mutuality of obligation there will be no contract of employment: *Cheng Yuen v Royal Hong Kong Gold Club* [1998] ICR 131. The possibility of future offers of work is not enough; a framework for a series of successive ad hoc contracts of service is not necessarily enough: *Carmichael.*

19. The documentary position is not necessarily determinative, nor necessarily the starting point, and I must also consider the reality of the situation: *Uber BV and others v Aslam and others* [2021] UKSC 5. The conduct of the parties and other evidence may show that the written terms were in fact understood and agreed to be a record, possibly an exclusive record, of the parties' rights and obligations towards each other. However, there is no legal presumption that a contractual document contains the whole of the parties' agreement and no absolute rule that terms set out in a contractual document represent the parties' true agreement just because an individual has signed it: *Uber* at [85].

20. The parties' intentions may be a relevant factor but it is the substance of the situation that should be given significant consideration.

21. In *Nursing and Midwifery Council v Somerville* EWCA Civ 229 a panel member chair of the Nursing and Midwifery Council's Fitness to Practice Committee with a portfolio career was found to be a worker. The fact of an overarching contract did not impose an obligation to offer hearing dates, and a claimant's acceptance of hearing dates did not preclude a finding that they were a worker when they were in fact working. Applying *Somerville*, an individual does not need to be offered and accept a minimum amount of work in order to be a worker.

22. *Somerville* concerned the individual being subject to written terms of agreement, referred to as an overarching contract, where the individual agreed to sit on hearings on particular days although was free to refuse to accept any particular hearing date. That case concerned a claim for holiday pay on the basis of worker status, and the Court of Appeal upheld a finding of the Employment Tribunal that the claimant was a worker within limb (b) of the definition of worker in regulation 2(1) of the Working Time Regulations 1998 ('the Regulations'). This was a case where there was an overarching contract between the claimant and the respondent, as well as individual contracts when hearings were assigned and he agreed to provide his services personally. The Employment Appeal Tribunal in *Somerville* had held that an irreducible minimum of obligation was not a prerequisite for establishing worker status in the sense of limb (b) of the Regulations. The Court of Appeal confirmed that this was correct.

23. Regulation 2(1) of the Regulations defines a worker as an individual who has entered into, or works under, or worked under, a contract of employment, or 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. A similar definition of worker is included in the ERA 1996. In order to qualify as a worker, there must be a contract between the claimant and respondent, the contract must be one in which the claimant undertakes to perform work personally, and the respondent must not be a client or customer of a profession or business carried out by the claimant (*Uber* at [41]). The fact of mutually enforceable obligations does not necessarily make a contract a worker's contract, however (*Somerville at [46]).*

24. The way in which an individual is taxed is not, on its own, determinative of employment status.

25. The right to not be dismissed unfairly applies to an employee but not a worker. The right to statutory minimum notice applies to an employee but not a worker. The right to protection from unlawful deduction from wages and the right to paid annual leave applies to both employees and workers.

26. In this case, the claimant says that she was an employee on a 'zero-hours contract'. The respondent says that the claimant was a fully self-employed contractor who accepted individual contracts for the specific dates she was booked for.

Findings and conclusions – employment status

27. On the basis of the evidence, including the oral of the claimant, I make the following findings. The claimant's legal relationship with the respondent started in 1990 when she first received written terms and conditions from the respondent for her role as an independent clerk to the school admission appeals panels. The original terms and conditions were not in evidence but the terms and conditions later issued by the respondent were in very similar terms and in substance updated the revised rates of pay. The written terms of the claimant's relationship with the respondent were dated 1 February 2016. These were in evidence. These terms included that the claimant would be paid £400 for a full day of hearings. The rate included administrative work including pre and post contact with appellants, travelling time, preparatory administrative work, and drafting and sending decision letters to appellants and notifying schools (at 1.1).

28. At 1.3 the terms included that: '*At peak times the Royal Borough of Greenwich schedules three days per week for hearings and will allocate appeals to Clerks subject to their availability and to ensure continuity of service'.* Other terms relate to expenses.

29. I am satisfied that these were the terms and conditions of the claimant's legal relationship with the respondent. There are no terms in relation to notice, including how the relationship would be brought to an end, and the claimant accepted this in oral evidence. I am satisfied that these terms and conditions

represent the entirety of the contractual provisions between the parties because they reflected, and were consistent with, the reality of the situation as it was described to me in oral evidence. I find that these written terms and conditions were the claimant's contractual provisions because she agreed in oral evidence that the substance of the terms and conditions had been unchanged, save for the level of fees and expenses. Also, the claimant accepted in oral evidence that she accepted the 2016 terms and conditions. It is plain that these are the contractual conditions the parties operated under.

30. Although the claimant referred to oral conversations with people at the respondent about notice, I find that these did not amount to additional oral contractual obligations. This is because they were vague and general in nature, and were not clearly intended to represent contractual obligations. In any event, at most the claimant's oral evidence was that she made a verbal agreement that either side could 'call it a day' and they would 'let each other know' if the claimant took a different full time role. This is not the same as establishing a contractual term for a paid notice period and would not specify a notice period or payment for that period.

31. From the claimant's oral evidence, she was only unavailable to work 1-2 times during the course of her relationship with the respondent.

32. I find, consistent with the claimant's oral evidence and the written evidence, that the claimant did not have to accept any work on any particular date and the respondent did not have any obligation to offer her work, and the claimant knew that she could always turn down offers of work if she wanted to.

33. The claimant made claims for expenses and fees using various forms to the respondent, which would set out her fee, the date of appeal, and any claimable expenses. One example of the form states that tax was deducted by the respondent on the amount payable and the claimant had a payroll number. The fees are described at some times as 'sessional' or as a claim for 'fees'. The claimant was paid by the respondent after the claim for fees and expenses was made. From the claimant's oral evidence, she would sometimes put in claims for several months together.

34. In terms of booking practice, from the claimant's oral evidence, the claimant was contacted by the respondent's appeals administrative team, they would tell her what was coming up in the future, and they would check the claimant's availability and ask her if she could do specified dates. The claimant might only be contacted once a month, or sometimes more. The work was irregular.

35. From the claimant's oral evidence, I find that although the claimant referred to a named 'line manager', the conversations between the claimant and her line manager were about preparing the summer rounds of appeals. The claimant followed the same procedures as an appeals administrator, such as the guidance in the School Admission Appeals Code. The claimant's 'line manager' did not have a pastoral role and the claimant did not have to make a lot of contact with her during the course of the work. On the claimant's own evidence, these were not more than regular informal discussions about how the appeals were going.

36. The claimant was not subject to the respondent's employment procedures, such as the disciplinary procedure, grievance procedure and sickness procedure. This is, in part, because, on the claimant's own evidence, she was not informed of them on appointment or subsequently. Also, they are not part of the 2016 terms and conditions.

37. I find that the claimant's last paid engagement was on or around 6 September 2018. She submitted the claim for payment in December 2018, and she was paid a short time after that, which may have been as late as January 2019. This is because of the claimant's oral evidence.

38. I accept that there was some correspondence between the claimant and the respondent in around July 2015 on the basis of the claimant's oral evidence. However, in the absence of copies of the exact correspondence I cannot accept that this amounted to a wholesale acceptance by the respondent that the claimant had employee status. This is because the subject of the correspondence was whether or not tax should be deducted from the claimant's fees. This is not determinative of employment status.

39. On the basis of the claimant's oral evidence and the documentary evidence, the claimant entered into a lengthy period of correspondence with the respondent which included letters sent in 2020 and the submission of her claim, first attempted in December 2022 and then resubmitted in January 2023 following completion of ACAS early conciliation.

40. On the basis of the claimant's oral evidence and the 2016 terms and conditions, the claimant was entitled to work for other schools or boroughs. There was no exclusivity arrangement.

41. At one stage, the respondent asserted that the claimant was self-employed, such as by letter dated 3 September 2020, on the claimant's own evidence. At one stage, Mr Simmonds of the respondent had referred to the claimant as an employee during an oral conversation. However, this was never confirmed in writing.

42. The claimant's letters of complaint included three sent in 2020: 20 March 2020, 24 September 2020 and dated 25 November 2020. On the claimant's own evidence, she initially raised the issues with her 'line manager' on 12 July 2018 but nothing was forthcoming, and 'alarm bells' were already sounding to the claimant by September 2018.

43. On the claimant's own evidence, she raised the issue of paid holiday and reimbursement of expenses in the 20 March 2020 letter. The 20 March 2020 letter raises those issues and also refers to the claimant having a 'unique' employment status at the respondent. It also refers to unspecified advice that the claimant had received at that time. The 24 September 2020 letter makes it clear that the claimant was aware that the respondent was asserting that she had self-employed status, and in that same letter the claimant states that she had carried out her own research as to the existence of employee, worker, and self-employed status. She also states in that letter that she proposed to make contact with ACAS as her first port of call. On the claimant's own evidence, she was requesting from the respondent details of grievance procedures and asking

whether she had the right to go to the Employment Tribunals by email sent on 28 October 2021.

44. I find that the respondent did not contact the claimant to ask her to conduct any panel hearings after September 2018. This is on the basis of the claimant's own evidence.

45. The respondent's own records are suggested by the claimant to show that the claimant's relationship with them ended on 31 March 2020.However, in the absence of a copy of those documents, it is unclear exactly what this indicates or what conclusions can be made from this.

46. I have decided that, on the basis of the findings above, the clamant was not an employee of the respondent. This is because there was no mutuality of obligation between them. The respondent was under no obligation to offer any work to the claimant at all. The claimant was under no obligation to accept any work from the respondent at all. It was an entirely casual set of arrangements under which neither side was under any obligation. This is supported by the documentary evidence of the terms and conditions and the oral evidence as to the working practices.

47. Also, I find that the respondent did not have the requisite level of control over the claimant for an employment relationship to arise. Although the claimant followed procedures as set by the respondent, this was more to confirm with the actual appeals process than true working control. She was not subject to the respondent's employment procedures, such as the disciplinary procedure. I do not consider the receipt of communications from the respondent which relate to reorganisations or similar showed sufficient control for employee status to arise. In general, I agree with the respondent's submission that the claimant's working practices, overall, were largely her own. The brief oral evidence as to conversations with a 'line manager' are insufficient to show that the claimant was controlled by the respondent in the manner of an employee. I am also satisfied that the written terms and conditions were consistent with the reality of the situation. This is because there is no clear and sufficient evidence to show otherwise. I have also taken into account that the terms of engagement cover work done before and after the relevant hearing day and irregular nature of the work, albeit carried out in the context of a longer term relationship.

48. I do not accept that this is a case where the tax position is determinative of employment status. Although I accept the claimant's evidence that her fees were taxed at source by the respondent, this does not in of itself satisfy the test for employee status and is in contrast the contractual position evidenced in writing as to the wider obligations between the parties. Neither do I consider the fact that she was paid as PAYE as determinative, particularly when this payment method is accompanied by the submission of invoices for sessional work by the claimant. Also, the tax position is not particularly helpful in determining employment status in these circumstances because HMRC does not recognise worker status.

49. I do not consider this to be a case where the parties' intentions are clearly determinative. The claimant's strongly expressed views are not consistent with the respondent's position. Moreover, in light of the respondent relying on brief

terms and conditions and sessional pay by way of invoicing this strongly suggests that the respondent did not intend that the claimant to be an employee, otherwise it would have used a more traditional employment contract and HR procedures in line with its actual employees.

50. I do not consider that access to a secure 'Employee Self-Service Account' is determinative of employment status in the claimant's favour. This is because this on its own does not demonstrate the necessary contractual obligations or levels of control that would be more consistent with employee status.

51. I do not consider that that the reimbursement of the claimant's expenses by the respondent is determinative of employment status. This is because all three types of employment status are capable of having expenses reimbursed.

52. I do not consider that the existence of a 'staff card' necessarily demonstrates employee status. This is because identification documentation can be used for a variety of purposes and I give greater weight to the obligations and working practices of the parties than any particular label in making my decision.

53. I also do not find that any indication by either party as to what they thought the employment status was is particularly instructive. This is because employment status is a matter of fact and law for determination by the Tribunal and must take into account the reality of the situation. Although I accept that the respondent may have given mixed signals to the claimant in terms of its own understanding, and this is consistent with the claimant's own evidence that there was confusion within the respondent as to exactly what her employment status was, the principal basis for employment status must be the contractual position and respective obligations between the parties as it was carried out. Also, any apparent admission by the respondent as to employment status is undermined by its later position in correspondence that the claimant was in fact self-employed.

54. I also take into account the fact that the lack of exclusivity arrangements is a factor pointing away from employee status, taking into account the wider circumstances.

55. I find that there were no contractual terms as to notice pay. This is because there is no clear and reliable evidence as to any verbal contractual terms on notice – or even a suggestion as to what any notice period would be, and what payment might look like for notice. Also, there is no clear written evidence of a contractual term for notice.

56. In light of the claimant's evidence that the respondent has never formally notified her that the contractual arrangements had ceased, and her own acceptance in cross-examination, that in theory they could request her to clerk a future appeal, I do not find that the legal relationship between the claimant and the respondent has necessarily concluded.

57. In light of the claimant's status as not an employee, her claims for unfair dismissal and notice pay must fail. I add that the claimant's notice pay claim must be on the basis of employment status because there is no other contractual basis for a notice pay claim.

58. To the extent that it may be relevant to the claims overall, I am satisfied that the claimant was a worker for the relevant periods for the purposes of Regulation 2(1). This is because her situation was analogous to the facts in *Somerville*. I find that on each occasion that the claimant accepted offers from the respondent she entered into an individual contract with them to perform her clerking function in accordance with the 2016 terms and conditions, updated for revised fee and expenses levels as required. The claimant worked under a non-employment, ie. an 'other' contract, in writing to personally perform work. This was not in a customer or client-type basis in the context of a business or profession.

Findings and conclusions – time limits

59. I find that the claimant did not present her claims for holiday pay or expenses within the time limit set out above. Assuming the chronology in favour of the claimant, the claimant last worked for the respondent in September 2018 and the payment was made for that work no later than January 2019. The claimant did not present her claim within three months of that date.

60. I am satisfied that it was reasonably practicable for any holiday claim to have been brought within that time. This is for the following reasons.

61. Although the claimant states that she was unaware that she could bring a claim at that time, I am satisfied that she could and should have made herself aware of any rights she might have had to holiday pay within three months of the last payment that was made. The fact that the claimant entered into a very lengthy period of correspondence with the respondent did not mean that she could not have made a claim for holiday pay at that stage.

62. The claimant has suggested that it was not reasonably practicable for her to bring the claims in time on the basis that the respondent allegedly obstructed her efforts to gather information and answer her queries. I do not accept this. This is because the claimant did not need the answer to her queries or to exhaust any internal processes before she brought the claims. On the claimant's own evidence, the respondent had still not provided her with the information she had requested even after the employment claim had commenced. This suggests that the lack of responses was not in of itself a barrier to bringing a claim. Moreover, if the claimant was entitled to holiday pay on the basis that she was a worker or employee then this could have been claimed at an Employment Tribunal without any clarity or response from the respondent. The same is the case for any expenses or breach of contract claim that the claimant might have brought. On the evidence available to me, this is not the sort of case where the claimant was only in a position to bring a claim if she had exhausted any internal process or any correspondence exchanges had been concluded.

63. Moreover, on the claimant's own evidence, 'alarm bells' were ringing in 2018 and she was able to send detailed letters of complaint in 2020. Further correspondence came from the claimant in 2021. On the claimant's own evidence she raised the issue of paid holiday and reimbursement of expenses in the 20 March 2020 letter. This all undermines the suggestion that it was not reasonably practicable for her to complain to the Employment Tribunals during that period of time. In my judgment the substance of the claims was effectively

raised at least as early as the 20 March 2020 letter. The claimant's view is that this letter is merely an enquiry as to what she might receive, as opposed to making a claim. However, I do not accept her position. The fact that the claimant was not paid holiday pay or reimbursed certain expenses is clearly raised as an issue at that point, as was the nature of the alleged ending of the legal relationship between the claimant and the respondent.

64. Also, I consider that the fact that the claimant has conducted her own research into employment status as demonstrated in the 24 September 2020, including identifying contacting ACAS as a next port of call, undermines the suggestion that it was not reasonably practicable to bring a claim earlier than she did. Also, the 25 November 2020 letter expressly refers to the claimant exploring her options, including to some kind of 'appeal Court' and her own opportunity to study the available guidance on employment status.

65. I do not consider that any proper inference about the issues I have to decide can be drawn from the alleged lack of communications from the respondent about the claimant's complaints. The timing of her complaints, and whether or not she was booked for future work, do not establish employee status or that it was reasonably practicable for her claims to be brought within time.

66. I do not consider that there is anything about the pursuit by the claimant to bring and or conclude internal grievances that means it was not reasonably practicable for her to bring her claim to the Employment Tribunals. I do not accept that this is a case where any lack of documentation, even if that was the case, was such that it was not reasonably practicable for her to bring a claim, or receive advice on whether she could bring a claim, or do her own research as to whether or not she might have a claim. Whilst I do take into account the fact that the claimant is not legally represented, on her own evidence she has spoken to others, and has been able to refer to guidance issued by the Citizen's Advice Bureau and governmental guidance on employment status. I see no reason why this could not have been done at an earlier stage.

67. I do not consider that any failure on the part of the respondent to assert its position that the claimant was self-employed until later meant that it was not reasonably practicable for the claims to be brought within time. It was entirely possible for the claimant to make her claims to the Employment Tribunal without knowing the respondent's position. This is because the claim must be brought on her case, not theirs.

68. In the circumstances, I am satisfied that: the claimant was aware of her potential claims on a date significantly in advance of them having been presented to the Employment Tribunal; the claimant was in receipt of at least some advice and her own research as to employment status significantly before the claims were presented; and if the claimant did not know what the time limits were, she ought to have known. I do not consider there was any good reason for the delay in starting the Employment Tribunal claim given the findings I have made about the claimant's knowledge arising from her letters sent in 2020. In light of the content of those letters, I do not consider that the claimant acted reasonably in bringing the claim when she did.

69. If I am wrong about the above, then in any event the claim was not presented a reasonable time thereafter. This is because the claim was not presented until 26 January 2023. The delay involved is very significant in this case.

70. I make the same findings in relation to the claims for other payments relating to expenses between September 2018 and September 2019. No claim was brought for these until 26 January 2023. There is no clear rationale for this claim not having been made within three months as to when the claimant says it was due, which must have been a short period after September 2019. If the claimant had a claim for those expenses, it was not made within three months, and there is no clear reason as to why it was not reasonably practicable for any such claim to be brought within that time.

71. I also observe that there is no clear evidential basis for this claim, there being no express contractual requirement for the claimant to be paid the expenses claims for that period given that she did not carry out work for the respondent at that time. The claimant's case is that she maintained an Anytime Calls Contract with BT on the assumption that she may receive offers of work for the 2018-2019 academic year. However, this assumption does not give rise to a claim in contract on the findings I have made.

Employment Judge Barry Smith
8 November 2023