EMPLOYMENT TRIBUNALS

Claimant:	**Ms. Poonam Kumari**
2600202/2024 Respondents:	**Natalie Eden (R1)** **Emma Challen (R2)** **Jenny Bartlett (R3)** **Laser Clinics UK Management Limited (R4)**
2601049/2024 Respondents:	**UK Skin & Laser Clinics Limited (R1)** **Laser Clinics UK Management Ltd (R2)** **LCUK Holco Ltd (R3)** **LCUK Operations Ltd (R4)**
Heard at:	**Via CVP (Midlands East Region)**
On:	**18th September 2024; and** **25th September 2024 (In Chambers)**
Before:	**Employment Judge Heap (Sitting alone)**
Representation:	
Claimant:	**In person**
Respondent:	**Mr. A Allen K.C. – One of His Majesty's Counsel**

RESERVED JUDGMENT

1. The complaints of bullying, invasion of privacy/unlawful intrusion, breach of confidentiality, data breach, unlawfully obtaining personal data and misuse of personal information under Case Number 2600202/2024 are struck out under Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 as having no reasonable prospects of success because the Tribunal has no jurisdiction to entertain those complaints.

2. All remaining complaints under Case Number 2600202/2024 are struck out for want of jurisdiction on the basis that the Claimant was neither an employee nor worker of any of the Respondents to that claim and so she does not have the standing to advance the complaints brought under it.

3. All complaints under Case Number 2601049/2024 are struck out for want of jurisdiction on the basis that the Claimant was not an employee of any

of the Respondents to that claim and so she does not have the standing to advance the complaints brought under it.

4. The hearing listed for 16th, 17th and 18th June 2025 has been removed from the list.

REASONS

BACKGROUND AND THE ISSUES

1. This Preliminary hearing was listed at the direction of Employment Judge Shore at an earlier Preliminary hearing for case management which took place on 26th June 2024. At that stage the Claimant had issued her first claim under case number 2600202/2024 ("The First Claim") against Natalie Eden, Emma Challen, Jenny Bartlett and Laser Clinics UK Management Ltd. The first three Respondents to that claim are all employees of Laser Clinic UK Management Ltd. The First Claim comprised complaints of discrimination relying on the protected characteristics of race and age and for unpaid holiday pay.

2. It also included a number of additional complaints over which the Tribunal had no jurisdiction such as bullying, invasion of privacy/unlawful intrusion, breach of confidentiality, data breach, unlawfully obtaining personal data and misuse of personal information. Despite an indication at the earlier Preliminary hearing that the Tribunal has no jurisdiction in respect of those complaints, they were not withdrawn by the Claimant and accordingly remained live issues before me.

3. By the time that that first Preliminary hearing took place the Claimant had issued a further Claim Form on 24th June 2024 under claim number 6004500/2024 ("The Second Claim"). Due to the fact that it was presented only two days before the Preliminary hearing that Claim Form had not yet been accepted by the Tribunal by the time of the hearing before Employment Judge Shore and obviously therefore had not been formally served on the Respondents, although they had seen a copy. That claim was advanced against four Respondents. The only common Respondent to both claims was Laser Clinics UK Management Limited. The other Respondents to the Second Claim were UK Skin & Laser Clinics Limited, LCUK Holco Ltd and LCUK Operations Ltd.

4. The Second Claim potentially[1] comprised complaints of automatically unfair dismissal, failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations and discrimination relying on the protected characteristics of race and age.

5. Employment Judge Shore consolidated both sets of proceedings and because the Second Claim was then removed from being a reform case it was allocated a new case number of 2601049/2024.

[1] I say potentially because the basis of some of the complaints still remains unclear.

6. By the time of the Preliminary hearing before Employment Judge Shore the Respondents to the First Claim had made applications to strike out that claim, principally on the basis that it was said that none of the named Respondents employed the Claimant or engaged her as a worker. Similar applications were made in respect of the Second Claim after the Preliminary hearing as Employment Judge Shore had anticipated that they would be.

7. Accordingly, he listed this hearing to consider the following issues:

a. To determine whether the Tribunal has jurisdiction to hear the Claimant's claims of age discrimination, race discrimination and failure to pay holiday pay in claim number 2600202/2024 given that the Respondents assert that the Claimant was not an employee of, or worker for, any of the Respondents;

b. To determine whether the Tribunal has jurisdiction to hear the Claimant's claims in claim number 6004500/2024 (now 2601049/2024) if the Respondents in those proceedings make an application for the jurisdiction issue to be determined and if the Employment Judge on the day finds that it is possible and in the interests of justice to do so;

c. To determine whether all or any part of any of the Claimants claims in claim number 2600202/2024 have no reasonable prospect of success and should be struck out under Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013;

d. To determine whether all or any part of the Claimant's claims in claim number 6004500/2024 (again now 2601049/2024) have no reasonable prospect of success and should be struck out under Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 if the Respondents in those proceedings make an application for the issue to be determined and if the Employment Judge on the day finds that it is possible and in the interests of justice to do so;

e. To determine whether all or any part of any of the Claimants claims in claim number 2600202/2024 have little reasonable prospect of success and should be made the subject of a Deposit Order under Rule 39 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013;

f. To determine whether all or any part of the Claimant's claims in claim number 6004500/2024 (again now 2601049/2024) have little reasonable prospect of success and should be made subject to a Deposit Order under Rule 39 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 if the Respondents in those proceedings make an application for the issue to be determined and if the Employment Judge on the day finds that it is possible and in the interests of justice to do so;

g. To determine any other applications made by any party to either set of proceedings that the Employment Judge on the day finds that it is possible and in the interests of justice to do so; and

h. Make any case management Orders that may be required, including extending the final hearing date currently listed for three days to start on 16th June 2025.

THE HEARING

8. During the course of the hearing, I heard evidence from the Claimant. I say a word now about the Claimant's evidence. I did not find her to be an impressive witness. She frequently failed to answer the questions which were put to her in cross examination, would make bald assertions without any underlying factual basis and failed to engage with the way in which the many Respondents that she said actually employed her were her employer other than by saying that they were the "Franchisor", albeit she could not identify what that entity was said to be.

9. No evidence was led by the Respondents in either claim because the paucity of the evidence within the Claimant's statement led them to conclude that that was unnecessary.

10. Whilst evidence and submissions were able to be concluded within the hearing time, there was insufficient time for me to deal with deliberations and deliver Judgment. Accordingly, my decision was reserved and a further day of hearing time allocated for me to deal with that in chambers. I raised with the Claimant, in the event that I was minded to make any Deposit Orders, the question of her means. That was because she had not disclosed any documents about that issue nor dealt with that question in her witness statement despite a direction made by Employment Judge Shore to do so.

11. The Claimant's position was that she could not deal with this point unless she knew how many Deposit Orders might be made. That also turned on argument about whether certain allegations that the Claimant set out in respect of further information provided about the Second Claim after the first Preliminary hearing required permission to amend. It was accordingly agreed with both parties that if I was minded to make any Deposit Orders then I would list the claims for a further short Preliminary hearing for submissions to be made on that point. It was also agreed that if all or any of the claims proceeded there would need to be a further Preliminary hearing for case management. Given the decisions that I have reached, however, that will not now be necessary.

12. Before the commencement of the Claimant's evidence, I explained to the parties that I had read all of what I considered to be the key documents but that there had not been time to read each and every document provided to me given the volume of both the core bundle and a supplementary bundle. In that regard, the core bundle ran to 183 pages and the supplementary bundle to 336 pages. It was also not immediately obvious what relevance a number of the documents might have to the claims.

13. It was therefore stressed to the parties before any evidence was given that any documents that were key to the issues that I needed to determine must be referred to during the course of that evidence. Despite that, during the course of her submissions the Claimant began to refer to a number of documents within the bundle that she said were key to the case which had not been referred to at all in her witness statement or her oral evidence. It was therefore explained to the Claimant that whilst I would allow her to refer to them in her submissions it was unlikely that I would be able to place any weight on them. In all events, having considered them none of them assisted me in the matters that I had to determine.

14. Shortly before my deliberations were due to take place in chambers on 25th September 2024 the Claimant sent an email to the Tribunal seeking leave to adduce a further witness statement cross referenced to documents that she wanted to rely on that she had not given evidence about and to "re-open" the Preliminary hearing. The Respondent objected to that application. I refused those applications with written reasons being given which should be read in conjunction with this Judgment.

THE LAW

15. Before dealing with my findings of fact and conclusions in relation to the issues before me, I have had regard to the law which I am required to apply when considering the matters which Employment Judge Shore had set down for consideration.

16. Both parties have referred to a number of authorities. I have considered all of those and all arguments advanced whether they are expressly referred to in this Judgment or not.

Employee status – Section 230 Employment Rights Act 1996

17. An employee is defined by the provisions of Section 230(1) Employment Rights Act 1996 in respect of claims advanced under that Act. That section provides as follows:

> *"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."*

Employment status – Equality Act 2010

18. The test for employment status for claims under the Equality Act is contained in Section 83 and provides as follows:

> *"Employment" means—*
>
> *(a)employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;*
>
> *(b)Crown employment;*
>
> *(c)employment as a relevant member of the House of Commons staff;*
>
> *(d)employment as a relevant member of the House of Lords staff."*

Employee status – Transfer of Undertakings (Protection of Employment) Regulations

19. The test for employment status in respect of "TUPE" claims is contained within Regulation 2 Transfer of Undertakings (Protection of Employment) Regulations which provides as follows:

> *"employee" means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person's employer shall be construed accordingly."*

20. Common to all complaints for which employee status is required is the requirement for the Claimant to have a contractual relationship with the Respondent against whom the claim is advanced.

21. When considering the question of employee status it is necessary to consider firstly whether there is an express contract of employment. If not, then in order to find an employment relationship, the Tribunal must be persuaded that there is or was an implied contract. If a Claimant submits that there was an implied contract, then the onus is upon the Claimant to establish that that a contract should be implied (**Tilson v Alstom Transport [2010] EWCA Civ 1308**).

22. A contract can be implied only if it is necessary to do so (**James v London Borough of Greenwich [2008] IRLR 358**). In order for it to be necessary to do so, it must be needed to give business reality to a transaction and to create enforceable obligations between parties who are dealing with one another in circumstances in which that business reality and enforceable obligations would be expected to exist.

23. The starting point then in considering the question of the relationship between the parties will be the terms of any written agreement between them. However, those terms should only be disregarded where they do not reflect the true agreement between the parties – in other words where the contractual terms do not reflect the actuality of the relationship (**Autoclenz v Belcher [2011] UKSC 41**).

24. Whether there is a "contract of service" (and thus a contract of employment) is to be determined against the whole picture of the relationship and will invariably include consideration of a variety of factors. However, the decision in **Ready Mixed Concrete (South East) Limited v. the Ministry of Pensions and National Insurance [1968] 2QB 497** will be of fundamental assistance to a Tribunal tasked with consideration of employee status.

25. In short terms, the **Ready Mixed Concrete** decision provides that a contract of service exists if the following three conditions are fulfilled:

(i) The "servant" agrees that, in consideration of a wage or other remuneration, he or she will provide his or her own work and skill in the performance of some service for his "master" – i.e. the requirement for so called personal service;

(ii) He or she agrees, expressly or impliedly, that in the performance of

that service that he or she will be subject to the other's control in a sufficient degree to make that other "master" – the so called control factor;

(iii) The other provisions of the contract are consistent with it being a contract of service.

15. A key ingredient of employment status is the degree of mutuality of obligation of the parties to the contract. Mutuality of obligation is often described as the obligation on the employer to provide work on the one hand and the obligation on the individual to accept that work on the other. Without a sufficient degree of mutuality of obligation, there can be no employment relationship.

16. There are other potentially relevant factors which may assist in determining whether there is a contract of service (and which go to the third strand of the **Ready Mixed Concrete** test) such as the degree of any financial risk taken by the "employee"; who is responsible for provision of the tools of the trade; the degree of integration into the business or organisation; whether the individual is free to work elsewhere; the label placed on the relationship by the parties (although see **Autoclenz** above) and the nature and length of the relationship.

17. The Tribunal must consider the whole picture to see whether a contract of employment emerges, although mutuality of obligation and control must nevertheless be identified to a sufficient extent in order for a contract of employment to exist.

Worker status – Working Time Regulations 1998

18. The test for worker status in respect of the complaint of holiday pay is contained within Regulation 2 Working Time Regulations 1998 which provides as follows:

"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."

19. Therefore, in respect of any complaint advanced which requires a Claimant to be an employee or a worker, there is a requirement for there to be between them and the Respondent a contract.

Striking out a claim or part of it – Rule 37 Employment Tribunal Constitution and Rules of Procedure Regulations 2013

20. Employment Tribunals must look to the provisions of Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 when considering whether to strike out a claim.

21. Rule 37 provides as follows:

> *"At any stage of the proceedings, either on its own initiative or on the application of a party, the Tribunal may strike out all or part of a claim or response on any of the following grounds:*
>
> *(a) That it is scandalous or vexatious or has no reasonable prospect of success.*
> *(b) That the manner in which the proceedings have been conducted by or on behalf of the Claimant or the Respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
> *(b) For non-compliance with any of these Rules or with an order of the Tribunal;*
> *(c) That it has not been actively pursued;*
> *(d) That the Tribunal considers it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out.)"*

22. The only consideration for the purposes of this Preliminary hearing is whether the claims, or any part of them, can be said to have no reasonable prospect of success.

23. In dealing with an application to strike out all or part of a claim a Judge or Tribunal must be satisfied that there is "no reasonable prospect" of success in respect of that claim or complaint. It is not sufficient to determine that the chances of success are remote or that the claim or part of it is likely, or even highly likely to fail. A strike out is the ultimate sanction and for it to appropriate, the claim or the part of it that is struck out must be bound to fail. As Lady Smith explained in **Balls v Downham Market High School and College [2011] IRLR 217, EAT** (see paragraph 6):

> *"The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the words "no" because it shows the test is not whether the Claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in the submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects…"*

24. Claims or complaints where there are material issues of fact which can only be determined by an Employment Tribunal at a full hearing will rarely, if ever be, apt to be struck out on the basis of having no reasonable prospect of success before the evidence has had the opportunity to be ventilated and tested (see **Anyanwu v South Bank Student Union [2001] ICR 391** and **Ezsias v North Glamorgan NHS Trust [2007] ICR 1126**.

RELEVANT FINDINGS OF FACT ON EMPLOYEE AND WORKER STATUS

25. A useful starting point is the inter-relationship between the various Respondents. I have used their full names to avoid any misunderstandings given that the names of some of them are inherently similar.

26. It is common ground that the Claimant was initially employed by LCUK Nottingham Limited and also later by LCUK Solihull Ltd. As I shall come to further below, the Claimant's brother, Pawan Sudera, was involved in both of those entities, latterly as a Director of both of them.

27. The Claimant was employed by LCUK Nottingham Limited under a contract of employment dated 11th August 2021 in a role referred to as that of Nominated Manager. That contract of employment was later varied to include appointing the Claimant to the role of Nominated Manager at LCUK Solihull Ltd. The Claimant therefore became an employee of both of those entities and each of them operated separate clinics offering cosmetic procedures. Although both of those companies were by her own admission the Claimant's employer, she has not issued proceedings against either of them.

28. As at the date of the termination of the Claimant's employment her brother, Mr. Sudera, was the sole director of LCUK Nottingham Ltd. There is some controversy from the Claimant's perspective as to how her brother became a director but that does not matter for these purposes. The Claimant was neither a director nor shareholder of that company at any time nor of LCUK Solihull Ltd. She was, however, their employee.

The Franchise Agreement

29. On 16th August 2021 LCUK Nottingham Ltd entered into a Franchise Agreement with UK Skin & Laser Clinics. LCUK Solihull Ltd also entered into a Franchise Agreement with UK Skin & Laser Clinics on 22nd November 2021. That franchise arrangement was to operate the Nottingham and Solihull clinics under the UK Skin & Laser Clinics brand offering their cosmetic treatments and procedures.

30. The Franchise Agreements contained an obligation on LCUK Nottingham Ltd and LCUK Solihull Ltd to appoint a Nominated Manager which, as touched upon above, was to be the Claimant. Her employment by LCUK Nottingham Ltd only commenced a few days before that company entered into the Franchise Agreement and was clearly in anticipation of that arrangement. The variation to the contract of employment with LCUK Nottingham Ltd to appoint the Claimant as Nominated Manager of the Solihull clinic came into effect on the day that LCUK Solihull Ltd signed its own Franchise Agreement with UK Skin & Laser Clinics Ltd.

31. As would be expected when a Franchisor permits an entity to operate under its brand UK Skin & Laser Clinics Ltd imposed a number of obligations on both LCUK Nottingham Ltd and LCUK Solihull Ltd as Franchisees. That would be typical in order to protect the brand of the Franchisor, which would be even more acute when operating in the sphere of cosmetic procedures. Those obligations included a requirement to have a Nominated Manager and a job description for such a role – which was an important one because it involved oversight of the clinics in accordance with the Franchisors brand – was attached to the Franchise Agreements.

32. UK Skin & Laser Clinics also had obligations to assist the Franchisee to set up their business and offer advice and it also required the Franchisees to operate in accordance with a manual and to do so to the highest standards. Again, that is common sense given that there would be a need for any Franchisor to protect their brand.

33. The Franchise Agreements could not impose any obligations on the Claimant, however, because she was not a party to it. She was at all times to be an employee of the Franchisees – i.e. LCUK Nottingham Ltd and LCUK Solihull Ltd. As already touched upon above, she was not a director nor was she a shareholder.

34. Whilst the Claimant asserted that UK Skin & Laser Clinics imposed conditions on the terms of her employment such as the level of her remuneration and any entitlement to bonuses which LCUK Nottingham Ltd and LCUK Solihull Ltd were obliged to agree to, that was an assertion only and whilst the Claimant contended that there was an email to that effect, she was unable to locate it even after an adjournment to deal with that. However, even if the Claimant was correct about that, those were conditions – or control – over LCUK Nottingham Ltd and LCUK Solihull Ltd, not over the Claimant. Whilst they may have indirectly impacted her, that was not such to provide any degree of control directly over her nor was she doing any work personally for any entities other than LCUK Nottingham Ltd and LCUK Solihull Ltd. They were responsible for paying the Claimant and directing her in the course of her duties.

35. Returning then to the interactions between the various entities against whom the Claimant has issued proceedings, it is not in dispute that both LCUK Nottingham Ltd and LCUK Solihull Ltd are joint venture companies which are owned in equal proportions by SS Laser Clinics Ltd and LCUK Holco Ltd. They all entered into a Joint Venture Shareholders Agreement on 16th August 2021, that being the same day as LCUK Nottingham Ltd entered into the Franchise Agreement with UK Skin & Laser Clinics.

36. SS Laser Clinics Ltd also acted as a guarantor for each of the franchisees (LCUK Nottingham Ltd and LCUK Solihull Ltd) under the Franchise Agreements. SS Laser Clinics Ltd is owned and operated by members of the Claimant's family. No proceedings have been issued against that entity although LCUK Holco Ltd is a Respondent to the Second Claim and was the other half of the joint venture arrangement. They were also a proposed Respondent to the First Claim but the claim against them was rejected for want of the Claimant not having obtained an early conciliation certificate naming that entity.

37. UK Skin and Laser Clinics is wholly owned by LCUK Holco Limited which also wholly owns Laser Clinics UK Management Limited (formerly UKSL Management Limited). Laser Clinics UK Management Limited is the management partner of UK Skin & Laser Clinics. LCUK Holco Limited is a wholly owned subsidiary of LCUK Operations Ltd. They are respectively the Third and Fourth Respondents to the Second Claim.

38. The only express contracts between the parties are therefore as follows:

a. A Joint Venture Shareholders Agreement on 16th August 2021 between LCUK Holco Limited and SS Laser Clinics Limited;

b. A Franchise Agreement between UK Skin & Laser Clinics and LCUK Nottingham Limited dated 16th August 2021

c. A contract of employment between the Claimant and LCUK Nottingham Ltd for the position of Nominated Manager of the Nottingham clinic dated 11th August 2021;

d. A Franchise Agreement between UK Skin & Laser Clinics and LCUK Solihull Ltd dated 22nd November 2021; and

e. A variation agreement between the Claimant and LCUK Solihull Ltd to appoint her also to the position of Nominated Manager of the Solihull clinic dated 22nd November 2021.

39. That being the structure and interaction between the various parties, I come to what occurred that has given rise to these proceedings.

40. As part of oversight of the way in which the clinics were being operated there had been some visits by Ms. Challen, Ms. Eden and Ms. Bartlett to both the Nottingham and Solihull Clinics. They were all employees of Laser Clinics UK Management Limited. That company was not party to the Franchise Agreements with LCUK Nottingham Limited and LCUK Solihull Ltd but they were the managing partners of UK Skin & Laser Clinics Ltd who were a party to it.

41. There came to be some concerns for UK Skin & Laser Clinics Ltd about how the clinics were being run arising from, as I understand it, the visits that I have referred to above. I do not need to say what all of those concerns were or whether the concerns were justified, but one area of concern was the Claimant's performance as Nominated Manager. Most of those concerns appeared to relate to the potential for the Claimant to cause damage to the reputation of the UK Skin & Laser Clinics Ltd brand.

42. Eventually matters resulted in UK Skin & Laser Clinics Ltd withdrawing their approval for the Claimant to be Nominated Manager at either of the Nottingham or Solihull clinics (see page 185 of the supplementary hearing bundle). The Franchise Agreement contained a provision for UK Skin & Laser Clinics Ltd to approve the person appointed as Nominated Manager (see page 42 of the supplementary hearing bundle) and given the key nature of that role and the requirement to protect the brand, it makes logical sense that they would want to do so.

43. The letter withdrawing that approval recorded that it had been agreed between UK Skin & Laser Clinics Ltd and Mr. Sudera – who was by that time a director of both LCUK Nottingham Ltd and LCUK Solihull Ltd – that the Claimant would be removed with immediate effect from day to day involvement with either of the two clinics and that performance concerns would be addressed (see page 186 of the supplementary hearing bundle). It is clear that the addressing of those performance concerns fell to Mr. Sudera on behalf of LCUK Nottingham Ltd and LCUK Solihull Ltd and not to any of the Respondents. However, it does not appear that that occurred and it is common ground that the Claimant remained in employment with both LCUK Nottingham Ltd and LCUK Solihull Ltd until UK Skin & Laser Clinics Ltd served a notice terminating the Franchise Agreements of both companies with immediate effect. I come to that further below.

44. In addition to working for LCUK Nottingham Ltd and LCUK Solihull Ltd, the Claimant was also working for a third employer elsewhere but was not prepared in her evidence to provide any details about that.

45. On 27th March 2024 UK Skin & Laser Clinics Ltd served notice to terminate the Franchise Agreements with both LCUK Nottingham Ltd and LCUK Solihull Ltd with immediate effect (see page 282 of the supplementary hearing bundle).

46. The had the result that the Claimant's employment automatically ended at that point with both LCUK Nottingham Ltd and LCUK Solihull Ltd because her employment as Nominated Manager for both companies was dependant upon the continuation of the Franchise Agreements.

47. On 8th April 2024 both LCUK Nottingham Ltd and LCUK Solihull Ltd entered into administration. The Claimant contends that the contracts of employment of all employees transferred to UK Skin & Laser Clinics Limited. There is no evidence of that and in all events that could not have included the Claimant because her employment had already terminated automatically as a result of the termination of the Franchise Agreements some days earlier and for a reason entirely unconnected with any transfer (assuming that there was indeed a transfer).

CONCLUSIONS

48. This is an unusual case because in the vast majority of claims where employee/worker status is an issue, there is some form of agreed contractual relationship between the parties – whether express or implied – and it is simply the question of whether that contractual arrangement amounts to a contract of employment that is at issue. That is not the case here. The Claimant candidly accepted in her evidence that there was no express contractual relationship between her and any of the Respondents.

49. The only agreement which has been pointed to upon which the Claimant may possibly seek to rely is the Franchise Agreements. However, the Claimant was not a party to either of the Franchise Agreements nor was she a director or shareholder of LCUK Nottingham Ltd or LCUK Solihull Ltd who were parties to those Franchise Agreements and so any control that any of the other Respondents may have had over the operations of those businesses cannot be relevant to the Claimant.

50. Although the Claimant did not appear to suggest this, I have considered if there could be an implied contractual relationship between her and any of the Respondents. I remind myself that that a term can only be implied if it is necessary to do so and that in order for it to be necessary to do so, it must be needed to give business reality to a transaction and to create enforceable obligations between parties who are dealing with one another in circumstances in which that business reality and enforceable obligations would be expected to exist.

51. It is not necessary to imply a contract between the Claimant and any of the Respondents either to the First or Second Claims. The Claimant had an employment contract with LCUK Nottingham Limited and a variation of those contractual terms so that she was also employed by LCUK Solihull Limited. The fact that those companies are in administration does not alter the fact that they were the Claimant's employer – a fact that she accepts – nor does it create a need to imply a contract with any of the other Respondents to the claim. There were no dealings between the Claimants and any of the Respondents which would need to imply a contractual relationship to give business reality to those dealings nor would any enforceable obligations be expected given the structure which has already been referred to above.

52. All of the complaints that the Claimant advances in the First Claim and the Second Claim require her to have had a contract with the Respondents to those claims. The Claimant did not have one with any of the named Respondents and for those reasons the First and Second claims fail on that basis because there was no contractual relationship between the Claimant and any of the Respondents nor is it necessary to imply one. It was only if there had been a contract between the Claimant and any of the Respondents that the issue would then have arisen a to whether that amounted to a contract of employment and issues as to personal service, control, financial risk, ability to work elsewhere and the other relevant factors come into play. They cannot come into play here, however, because there was no contract between the Claimant and any of the Respondents which needs to be scrutinised as to whether it amounted to a contract of employment.

53. I should say that even had I found that there was a contractual relationship between the Claimant and any of the Respondents, I would not have concluded that that amounted to a contact of employment. Whilst the Claimant made assertions as to, for the most part, the degree of control that various unspecified Respondents had over her, those had no factual basis. The reality was that certain direction was given to the franchisees to both Franchise Agreements via Mr. Sudera as director by UK Skin & Laser Clinics Ltd as would be expected under a franchise arrangement but there was no evidence of any control over the Claimant directly that had any factual basis to it. Even the documents referred to by the Claimant for the first time in her closing submissions did not assist in that regard.

54. There are of course three individual Claimants in the First Claim. It is not in dispute that they were all employees of Laser Clinics Management Ltd. The only potential part of the claim for which they could be liable is in respect of the complaints of age and race discrimination. Whilst there can be personal liability under Section 109 Equality Act 2010 for individuals who have discriminated against an employee, they must be employees of the same employer. The Claimant was not, for the reasons already given at any time an employee of Laser Clinics UK Management Ltd. The Claimant cannot therefore bring the

complaints in the First Claim against the three individual named Respondents within the provisions of Section 109 Equality Act 2010.

55. As a result of the conclusions that I have reached on employee and worker status both the First Claim and the Second Claim are therefore struck out in their entirety against all Respondents for want of jurisdiction.

56. However, there is a further issue in all events with regard to certain complaints raised in the First Claim which are of bullying, invasion of privacy/unlawful intrusion, breach of confidentiality, data breach, unlawfully obtaining personal data and misuse of personal information. The Employment Tribunal has no jurisdiction to deal with any of those complaints whether the Claimant was an employee or worker or not. All are under the jurisdiction of other entities such as the civil courts or the Information Commissioners Office. That being the case they have no reasonable prospect of succeeding in a claim before the Employment Tribunal and are accordingly struck out under Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

57. All complaints are therefore at an end and the full merits hearing has been removed from the list.

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Employment Judge Heap

Date: 20th October 2024

RESERVED JUDGMENT SENT TO THE PARTIES ON

.....25 October 2024.....

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FOR THE TRIBUNAL OFFICE

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