



EMPLOYMENT TRIBUNALS

Claimant: Ms R Hollis

Respondent: MVRRS Group Limited (Dissolved) (R1)
Wales England Care Ltd (R2)
MVRRS Training Limited (in creditors' voluntary liquidation) (R3)

HELD AT/BY: Wrexham by CVP **on:** 30th September 2024 (&
22nd October 2024 in
Chambers)

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Ms D Bowd, Employment & Discrimination Team Leader, CAB

Respondent: Mr M Ramsbottom, Senior Litigation Consultant

JUDGMENT

The judgment of the Tribunal is that the Claimant was employed by Wales England Care Ltd, trading as Wales England Training, and as WE Care, (R2), from 9th September 2019 until termination of employment on 28 July 2022.

REASONS

Introduction & The Issue:

1. The principal issue to be determined was the identity of the correct Respondent to the Claimant's claims; in other words, who was her employer at the material time. The material time was when she was ostensibly declared redundant and dismissed. The Claimant says that she was employed by Wales England Care Ltd and should remain so as she was not redundant. The Respondents, Wales England Care Ltd and MVRRS Training Limited, say that she was employed by MVRRS Training Limited and was fairly dismissed by reason of redundancy when that company went into liquidation.

2. Subject to any finding in relation to the principal issue I would have to determine whether the Claimant's employment had transferred, the Claimant would say in the alternative, from MVRRS Training Limited to Wales England Care Ltd; the Respondents deny that there was any transfer of the business entity and therefore of the Claimant's employment in any event.
3. At the heart of this preliminary hearing is a complicated situation caused by a profusion of companies with confusion of trading names adopted by the Directors of them, Mr Christopher Churcher and Mrs Kim Churcher. In his evidence Mr Churcher acknowledged, and apologised, for the apparent ambiguity.
4. I will not refer to companies as R1, R2 etc or by any abbreviated names as the situation is already confusing enough and I consider that it may be easier for the reader if I identify each company by its full name each time. It is the use of truncated and interchangeable names that has caused a lot of the confusion facing the parties today. If I have not added "Ltd" at the end of a name, then it is deliberate.
5. The Claimant has made substantive claims relating to, amongst other things, the termination of her employment. This judgment does not trespass on the issues in such claims other than the identity of the Respondent to them. I will avoid making findings of fact or any expression of a judgment that might embarrass any later Tribunal. I have confined myself to the principal issue of the identity of the Claimant's employer at the material times.

The Facts:

6. The Companies:

- 6.1. Mountain View Residential and Respite Services Ltd: Mr and Mrs Churcher acquired a business trading as Mountain View Residential and Respite Services. It originally offered residential and respite care. Upon incorporation the company was called Mountain View Residential and Respite Services Limited. It was incorporated on 22 December 2010. Its company number was 07476639. Mr and Mrs Churcher changed its name on 6 June 2018 to MVRRS Training Limited.
- 6.2. MVRRS Training Limited: this is the successor name of the above company, Number 07476639, incorporated on 22 December 2010. It delivered training in the workplace through apprenticeships. This company is a Respondent to the Claimant's claims. It went into creditors' voluntary liquidation on 7 September 2022. The Respondents say that the Claimant was employed by this company until she was made redundant in consequence of the liquidation. The Claimant denies ever having been employed by it.
- 6.3. Wales England Care Ltd: This company initially provided domiciliary care. It was incorporated on 27 May 2014, Number 09058627. Mr and Mrs Churcher acquired it and became the directors on 27 January 2017. It became a training provider and during the material time did not provide domiciliary care. The Claimant says that she was employed by this company.

6.4. Wales England Care Training Ltd: Mr and Mrs Churcher incorporated this company on 17 May 2017, Number 10775041. Their intention had been to create a specialist training company delivering qualifications in health and social care. Owing to the cost considerations of administering yet another company and project, it was not activated but stayed dormant. It did not trade. On 12 July 2018 it changed its name to MVRRS Group Limited.

6.5. MVRRS Group Limited: This is the successor name of the company Wales England Care Training Ltd (incorporated 17 May 2017, Number 10775041). It too remained dormant. It was dissolved on 18 July 2023. It is named as a Respondent but as a dissolved company it is not a legal entity and has no role or part in these proceedings. For the sake of form, I dismiss it as a named Respondent; that takes care therefore of both Wales England Care Training Ltd and MVRRS Group Limited.

6.6. The upshot is that Mr and Mrs Churcher were, at the material time, directors of MVRRS Training Limited and Wales England Care Ltd. They offered care services and were training providers. They traded both companies indistinguishably as either Wales England Care or Wales England Training or “WE Care” as and when it suited their purposes. They used these names interchangeably and for their administrative convenience. They had little apparent regard at the time for establishing clarity of responsibility for employment, mixing and matching some employees, and services of each company, as suited their purposes. An example of this crossover is at page 125 of the main preliminary hearing bundle which contains development day slides dated 29 August 2017, prior to the Claimant’s employment. The slide shows, in a series of arrows, progression from MVRRS Limited to Wales England Care Limited and “WE Care”, to Wales England Care Training Limited and “WE Care”.

7. The Claimant’s recruitment:

7.1. The Claimant Worked in the training sector for many years before her involvement with the Respondents and was based in the Swansea area.

7.2. On 13 August 2019 Neil Vaughan, Business Manager (Wales) wrote to the Claimant offering her the position of Assistant Business Manager commencing on 1 September 2019. The letter has no heading, and the Claimant has no recollection of having received it, but in the final paragraph Mr Vaughan said: “we look forward to you joining us here at Wales England Care Limited, a formal induction will be arranged during the month of September.”

7.3. On 5th September 2019 she had a meeting with Richard Elliott whom she was told and understood was the Business Improvement Director for Wales England Care Training and with Mrs Churcher as a director of Wales England Care Training. This meeting was to follow up the offer of employment. The Claimant understood and understands from being reminded of the offer and of

this meeting, that in technical terms she was offered employment and accepted employment with Wales England Care Limited trading as Wales England Care Training.

- 7.4. Significantly, the Claimant's experience to that date was in training in relation to health and care, but she was not experienced in the provision of residential or domiciliary care or its management.
 - 7.5. Mr Elliott sent a confirmatory and inquiring emails to the Claimant using the address richard.elliott@walesenglandcare.co.uk.
 - 7.6. The Claimant was issued with a statement of terms of employment. It appears at page 191 of the preliminary hearing main bundle. It bears the logos MVRRS Training Limited and Wales England Care Training, and it is headed "MVRRS Ltd Wales England Care Ltd". It refers to particulars of the main terms for Mountain View Residential and Respite Services Limited. The heading therefore refers to four separate company names in addition to Wales England Care Training, whose logo is shown.
 - 7.7. The statement of main terms of employment confirms that the Claimant's job title was as stated in the job offer. The job offer at page 190 refers to her as Assistant Business Manger and welcomes her to Wales England Care Ltd.
 - 7.8. The Claimant commenced employment with Wales England Care Limited on 9 September 2019.
8. The Claimant's job:
- 8.1. From the outset the Claimant was allocated the e-mail address rebeccahollis@walesenglandcare.co.uk; she was provided with an e-mail signature stating her position, and the company name as Wales England Care Training.
 - 8.2. In September 2020 the Claimant was promoted to Business Manager; her job title became Wales England Care Business Manager.
 - 8.3. The Claimant worked from 9 September 2019 until 28 July 2022 as Assistant Business Manager or Business Manager, managing the provision of training and never in domiciliary care management. She received instructions from, and was line managed by, Managers and Directors of Wales England Care Ltd on its behalf. She worked to their requirements.
 - 8.4. Although initially the Claimant managed trainers in the southwest of Wales she was not confined to that area. Some trainers whom she managed lived in Wales but worked in England and some trainers from England worked in Wales, in addition to which the Claimant managed English trainers in England. As stated, she only managed trainers, and they were on her Team at Wales England Care Ltd.

- 8.5. At all material times the Claimant considered that she was employed by Wales England Care Limited, trading either as Wales England Training or as WE Care. Neither Mr Churcher's congratulatory e-mail on her appointment as Business Manager, nor Mr Elliott's congratulations on her passing her probationary period in that post, gave her any reason to doubt her position bearing in mind use of the Wales England Care logo and Wales England Care Training address.
- 8.6. In similar vein, the Claimant's dealings with/knowledge of her employer's dealings with organisations such as Ofsted, Estyn, the National Training Federation Wales, Welsh Government and various colleges, all made reference to Wales England Care Training.
- 8.7. WPA offers a health insurance scheme and other benefits to providers of care and health services. The Claimant's employer registered her and the certificate at page 354 describes her as a member of Wales & England Care Limited (sic). There is no such company with the ampersand in its title.
- 8.8. Wales England Care Training was subject to City & Guilds inspections in respect of which the Claimant was known as the Business Manager and Internal Quality Assurer.
- 8.9. The Claimant was issued with a corporate blouse or shirt that she could wear if she wished; it was not compulsory to wear it. It bore a logo under which is written the name Wales England Care Limited. Mr Churcher tried to explain that it was issued only as a matter of convenience but was primarily intended for those engaged in domiciliary work and its management, that is for employees of MVRRS Training Limited. I find that it was the uniform issued to staff employed by Wales England Care Limited, including the Claimant. Others may have worn it too, if they chose to do so.
- 8.10. The Claimant's wages were paid through an account maintained by MVRRS Training Limited. That company's name appears on wage slips and all forms and declarations made regarding preparation of wages and their payment.
- 8.11. When the Claimant received her first wages, and on subsequent occasions, she queried why her wage slips bore the name MVRRS Training Limited and was told that this was just a matter of business convenience and that this was the account that her employer operated through for the purposes of paying wages. The Claimant accepted that explanation; she did not at any point consider that her employment contract had transferred from Wales England Care Limited to that company. She accepted the explanation given to her. Throughout her employment she remained of the belief that she was employed by Wales England Care Limited trading as WE Care or Wales England Care Training.
9. The ending of the Claimant's employment:

- 9.1. While the Claimant was on sick leave, MVRRS Training Limited went into creditors voluntary liquidation.
- 9.2. The Claimant was told that she had been made redundant in consequence of that liquidation, and that she would receive a pack of documents which she was to complete so that she could claim redundancy pay from the Insolvency Service. She queried her redundancy, whether her job remained, whether she could be employed elsewhere, and why she should complete the pack referred to. She was reluctant to proceed and was, and remains, (hence the claim), concerned about the suggestion that her job was redundant at all, and that she was employed by the insolvent company MVRRS Training Limited. The Claimant was told that she was redundant and re-assured that the means of her securing her redundancy pay was via the Insolvency Service which required her to complete the pack of forms provided. She did so. In doing so, the Claimant declared that she was an employee of MVRRS Training Limited. She did this to secure the payment that she was told she was entitled to receive, but only via that route. I find that she did not make that declaration with any conviction but through financial necessity and based on information received from her employer.

The Law:

10. Section 230 Employment Rights Act 1996 defines an employee as an individual who has entered or works under a contract of employment. An employer is the person by whom the employee or a worker has been employed, and employment means employment under A contract of employment.
11. The parties have referred to relevant authorities from which can be distilled tests such as that of control, but principally the irreducible minimum that there must be a mutuality of obligation between the parties. At very least, and whether the relationship is defined in writing, orally, or by practice, the parties must respectively recognise an obligation upon an employer to provide work and pay for it, and upon an employee to perform work to the required standard as and when and how required by the employer.
12. The actuality of the situation is of greater significance than written or oral labels attached to relationships and methods of working.
13. That said, a contract ought to be interpreted according to the common usage of the language used and a Tribunal ought not imply terms into a contract save where, and to the extent that, it is strictly necessary to give effect to the agreement.
14. Where a written contract is clear and complied with by both parties in practice, then it ought to take priority in deciding the nature of any relationship. Where there is no written document, or the written document is unclear or untrue to the actuality of the situation, a Tribunal is entitled to look at all surrounding circumstances considering all relevant features of the working relationship. Ultimately, and in addition to ascertaining whether there was a suitable or sufficient element of control

to justify describing the relationship as one of employment, the Tribunal would have to come back to considering the issue of mutuality of obligation.

Application of law to facts:

15. The Claimant's statement of terms and conditions of employment includes reference to a plethora of company names and a couple of logos. It refers however to a very clear written offer of employment welcoming the Claimant to Wales England Care Limited. With that as the context for the statement of terms and conditions, it is apparent to me (as it was apparent to the Claimant), that there was only one operative company name in the heading to that document, namely Wales England Care Limited. Perhaps Mr and Mrs Churcher used the same document as a generic document for employees of its many and varied companies. The circumstances of the Claimant's recruitment, her application to work for Wales England Care Limited, the offer from that company and her acceptance to that company, coupled with the written statement of terms and conditions created a relationship of employment between the Claimant and Wales England Care Limited. Those circumstances provided for the mutuality of obligation, and employment control, required in a relationship of employment between Wales England Care Ltd and the Claimant.
16. I am satisfied that throughout her working life from 9 September 2019 until 28 July 2022 the Claimant considered herself employed by Wales England care limited and that that company controlled her work, conduct at work, and performance of work. That company considered itself obliged to provide work for her and pay her; she was mutually obliged to perform the work allocated to her to the standard required and at the times and locations required by that company.
17. The payment of wages is a complicating feature. Payment of wages and the accounting for tax and National Insurance are usually circumstantial indicators of the identity of one's employer. I have accepted the Claimant's evidence that she queried why her wages were paid via MVRRS Training Limited whose name appeared on wage slips. It was never her intention to be employed by this company and she did not perform work for it; she was not required by it to perform any work, and therefore there was no mutuality of obligation or control. The Claimant accepted, and so it seems, that Wales England Care Limited chose to delegate its payroll for administrative or other purposes that were not of interest to the Claimant and did not concern her day-to-day work activities, Mr Mrs Churchill held out that the payer was in fact MVRRS Training Limited, despite not being the Claimant's employer.
18. The wage complication is then further compounded by the Claimant claiming redundancy pay and other payments through the Insolvency Service declaring that she was an employee of MVRRS Training Limited. This complication concerns me more even than the payment of wages. I am conscious that this aspect of the case may involve legal issues beyond my jurisdiction, and I am therefore careful once again not to trespass on the potential of other litigation. I find however that the fact of the Claimant making a declaration for specific purposes in 2022 does not change the legal basis and character of the employment relationship in the period from 2019 to 2022 retrospectively. I find that the Claimant applied for a job with Wales

England Care Ltd, did not consider herself to have been offered employment by MVRRS Training Limited, and that she did not work for MVRRS Training Limited under a contract of employment. I find that the mutuality of obligation, the necessary control, and the relationship and nature of work undertaken by the Claimant for her employer all establish an employment relationship between her and Wales England Care Limited. Those findings are not vitiated by a declaration made based on repeated instruction about access to redundancy money said to be due to her in a situation where her employment had been terminated and she was told that access to funds could only be effected by completing the said declaration. The declaration was made without conviction; It does not destroy the pre-existing employment relationship.

19. Having heard and read the relevant witness and documentary evidence and having considered the parties' respective legal submissions and submissions on fact, in the context of the applicable law, I find that the Claimant was employed by Wales England care limited from 9 September 2019 until her dismissal on 28 July 2022. The reason and nature of her dismissal, whether it was fair or not, discriminatory or not, fall to be decided at another hearing.
20. A case management Preliminary Hearing will now be required in respect of the Claimant's extant claims against the identified Respondent, Wales England Care Ltd. For now it seems to me appropriate not to dismiss MVRRS Training Limited as a party pending that hearing, and any potential amendment of Wales England Care Ltd's response to the claim.

Employment Judge T.V. Ryan

Date: 29.10.24

JUDGMENT SENT TO THE PARTIES ON

30 October 2024

Katie Dickson
FOR THE TRIBUNAL OFFICE