EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001685/2024

Held in Aberdeen via Cloud Video Platform (CVP) on 17 March 2025

Employment Judge W A Meiklejohn

Dr A Fragoyannis	**Claimant** **Represented by:** **Mr A MacMillan - Counsel**
AMG Scot Ltd	**Respondent** **Represented by:** **Ms J Veimou - Litigation Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows –

1. In the period from 1 November 2022 until 31 October 2023, the employment status of the claimant was "worker" within the meaning of section 230(3)(b) of the Employment Rights Act 1996.

2. In the period from 1 November 2023 until 31 December 2023, the employment status of the claimant was "worker" within the meaning of the said section.

3. In the period from 1 January 2024 until 26 September 2024, the employment status of the claimant was not "worker" within the meaning of the said section.

REASONS

1. This Aberdeen case came before me for an open preliminary hearing, conducted by means of the Cloud Video Platform, on 17 March 2025. Mr MacMillan appeared for the claimant and Ms Veiman represented the respondent.

Procedural history

2. A closed preliminary hearing for the purpose of case management took place on 8 January 2025 (before Employment Judge Hosie). EJ Hosie's Note recorded that the claimant brought complaints of breach of contract, for notice pay and for accrued annual leave. These claims were denied by the respondent. Their position was that the claimant was self-employed and the Tribunal did not have jurisdiction to deal with his claim. The claimant's position was that he was a "worker".

3. The case was listed for the present preliminary hearing to determine the claimant's employment status, i.e. whether he was a worker at the relevant time. This was the sole issue which I had to determine. It was not suggested that the claimant had at any time been an employee of the respondent.

Evidence

4. Prior to the hearing the claimant had submitted a witness statement (and I have seen the subsequent correspondence about the numbering of the documents referred to in that statement). It was agreed that this statement should be adopted by the claimant and supplemented by oral evidence at the hearing. I also heard oral evidence from Mr J Galani, a director of the respondent.

5. I was provided with a bundle of documents prepared for use at the preliminary hearing. I refer to this below by page number.

Findings in fact

6. I should say at the outset that I have sought to restrict my findings in fact to matters which have a bearing on the issue which I had to determine. I have tried to avoid straying into territory which would become relevant only if I found that the claimant was a worker, rather than self-employed, while working for the respondent.

7. The claimant is a qualified medical general practitioner ("GP"). The respondent is a company which operates GP practices under contract to

various Health Boards. The claimant is registered with the General Medical Council ("GMC") and is required to adhere to the standards of professional behaviour expected of all doctors.

8. Mr Galani approached the claimant in August 2022 and offered him work as a GP in Alford. The respondent was taking over the GP practice in Alford as from 1 November 2022. The claimant accepted and, encouraged by Mr Galani, relocated from Ellon to Kemnay in October 2022 to be closer to the Alford practice. A daily rate of pay was agreed between Mr Galani and the claimant.

9. The claimant was provided with a contract by Mr Galani (49) which he (the claimant) signed on 9 September 2022. The contract was in these terms –

"AYRSHIRE MEDICAL GROUP – LOCUM TERMS OF ENGAGEMENT

This agreement confirms for a period of 12 months commencing 1st November 2022 and ending 31st October 2023 that Ayrshire Medical Group will employ Dr Aris Fragoyannis as a GP locum working 10 sessions, 5 days a week at a rate of £900 per day on site at Alford Medical Practice, 2 Gordon Road, Alford AB33 8FL.

The Practice shall engage you (the locum) as a self-employed, independent contractor and not as an employee, worker, agent or partner (and the locum shall not hold himself out as such). The locum shall not be entitled to any sick pay, paid holiday or other employment benefits.

The locum will be responsible for payment of his own income tax and national insurance contributions in respect of any fees received from an Engagement. The locum shall have personal liability for, and shall indemnify the Practice against, any loss, liability, costs, damages or expenses arising from any medical or clinical negligence on the part of the locum (or any Substitute) in connection with the provision of the Services during an Engagement.

The locum and the practice will provide a 1 calendar month notice period in order to terminate this engagement. Any deviation from the terms noted

within this document will enable either side to legally pursue any expenses that were a direct impact of this deviation."

10. The respondent was incorporated on 22 October 2022 (SC748476). It was the respondent (rather than Ayrshire Medical Group) which operated the Alford Medical Practice as from 1 November 2022. The contract required to be read as if entered into between the respondent and the claimant.

1 November 2022 – 31 October 2023

11. Between 1 November 2022 and 31 October 2023 (the "first period") the claimant worked at Alford Medical Practice. Initially he worked for 10 sessions per week (a session equating to half a day). The claimant described his daily routine in these terms –

"My start and finish times and patient contacts were fixed. I could not just turn up to work whenever it suited me or adjust my daily work schedule as I saw fit ….

"…. I was working 5 days a week, fulfilling all aspects necessary to the running of the practice. I saw patients, attended practice meetings, multi-disciplinary meetings, did home visits, completed all clinical shared administrative duties and, in short, did the same work as all other clinicians working at the practice."

12. The claimant was unhappy at the workload he required to undertake at Alford. This involved 18 patient contacts (telephone and/or in person) per session. He complained about this to Mr Galani, necessarily implying that he was not in a position to reduce his own workload unilaterally. The number of patient contacts could vary on days when the claimant was the duty doctor.

13. From January 2023 the number of days per week worked by the claimant reduced. I make no finding as to whether this was consensual or imposed by the respondent. Notwithstanding the reduction in days worked, the claimant continued to be involved in all routine aspects of the operation of the practice. He was included in group emails (and this continued beyond the first period). He attended an Alford community town hall event in Spring 2023 at which he was introduced as one of the GPs of the Alford practice.

14. While working at Alford the claimant was obliged to attend on every day, whether five per week or some lesser number, when he was scheduled to deal with patients. He was obliged to complete his sessions on those days. The times at which he worked were dictated by the patient appointments assigned to him by the Practice and by the other operational needs of the Practice. He worked from time to time as "duty doctor" which entailed being available throughout surgery hours.

15. By prior arrangement with the respondent, the claimant did not work during the month of August 2023. He attended a one week training course in the USA and was then on holiday. He was not paid for this time off.

16. The Practice premises were fully equipped and resourced for the operation of a GP surgery. The claimant was expected to provide his own vehicle and basic medical kit for patient visits but, when he was working at the Practice premises, everything needed for the performance of his duties was provided by the respondent.

17. No question of the claimant sending a substitute to fulfil his work sessions arose. The claimant had indemnity insurance with MDDUS, and this did not cover a substitute.

18. The work undertaken by the claimant while working at Alford was not subject to any form of routine supervision. Phonecalls with patients were recorded and such recordings might be scrutinised in the event of a patient complaint. However, the claimant was not subject to any disciplinary procedure operated by the respondent.

1 November 2023 – 31 December 2023

19. I will refer to the period between 1 November 2023 and 31 December 2023 as the "second period".

20. During September 2023 Mr Galani told the claimant that the contract under which he was working at Alford would not be extended. Mr Galani advised the claimant that the respondent was taking over some NHS GP practices in Fife and that he wanted the claimant to work at the High Valleyfield Surgery.

The claimant agreed and commenced at High Valleyfield on 1 November 2023, working four days per week.

21. The claimant was involved in the normal routine of the High Valleyfield Surgery in much the same way as he had been at Alford. The expectation that he would be present and undertake sessions and other work of the Surgery was the same as with Alford. The arrangements described in paragraph 14 above applied equally when the claimant was working at High Valleyfield.

22. The claimant's locum work at High Valleyfield came to an end towards the end of December 2023.

1 January 2024 – 26 September 2024

23. I will refer to the period between 1 January 2024 and 26 September 2024 as the "third period".

24. The claimant asked the respondent to provide him with a new contract to work at Alford but the respondent was not willing to do so. Instead, Mr Galani asked the claimant to work at practices which the respondent was taking over in Fraserburgh, New Pitsligo and Portsoy. The claimant was not keen to do so because of the travel involved, but reluctantly agreed.

25. The claimant did not undertake any work for the respondent in January 2024. In February 2024, the claimant undertook sessions for the respondent at various locations including Alford, Saltoun Surgery at Fraserburgh, Central Buchan Medical Practice at New Pitsligo, and An Ceorann Medical Practice at Portsoy. Between March and September 2024, the claimant undertook sessions at Alford.

26. The documentation with which I was provided disclosed that the claimant worked for the respondent during the third period as follows –

February 12 days

March 3 days

April	7 days
May	4 days
June	4 days
July	3 days
August	4 days
September	3 days

The claimant's invoices (96-117) identified where he had worked in each calendar month.

27. During the third period the claimant provided to the respondent dates upon which he would be able to work. The dates upon which the claimant was being asked to work were then provided to him by the respondent's manager, Ms K Pratti, in advance of each calendar month. The claimant was able to decline dates which were not suitable for him, and did so. I make no finding as to whether dates provisionally assigned to the claimant required final approval from Mr Galani.

28. During the third period, the nature of the work undertaken by the claimant remained the same as during the first period and the second period. The respondent continued to provide fully equipped and resourced surgery premises from which that work was undertaken.

29. During January and February 2024 the claimant undertook a number of shifts with the GMED service which provides out of hours primary care within the area covered by NHS Grampian.

30. In March 2024 the claimant took up a position as a part-time salaried GP at Bucksburn, Aberdeen. He worked there two days per week. He did not accept work from the respondent which would have conflicted with this.

Invoices

31. Throughout the first, second and third periods, the claimant invoiced the respondent for the work he undertook (96-117). He was paid without deduction of tax and employee's National Insurance contributions. He was responsible for reporting his own income to HM Revenue and Customs and paying tax thereon.

Messages

32. Within the bundle of documents were WhatsApp messages exchanged between Mr Galani and the claimant between 16 August 2022 and 26 September 2024 (60-82). There were also WhatsApp messages exchanged between the claimant and Ms Pratti between 29 March 2024 and 26 September 2024 (55-59).

33. It was apparent from these messages that the way in which the working relationship between the respondent and the claimant operated was different in each of the first period, the second period and the third period –

    a. In respect of the first period, it was understood that the claimant would work at Alford for a 12 month period. This could be characterised as a long-term locum arrangement.

    b. In respect of the second period, it was understood that the claimant would work at High Valleyfield for a period of 2 months. This could be characterised as a short-term locum arrangement.

    c. In respect of the third period, the claimant was providing (monthly in advance) his availability to work on certain dates and was being offered work (i) in practices operated by the respondent according to the needs of those practices from time to time in February 2024 and (ii) at Alford between March and September 2024. The claimant was working at Bucksburn during the third period and declined sessions, offered by the respondent, which he was unable to undertake. This could be characterised as an ad hoc locum arrangement.

Submissions

34. Following completion of the oral evidence, there was insufficient time for submissions. It was agreed that written submissions would be provided by 21 March 2025. I am grateful to Mr MacMillan and Ms Viemou for the evident care taken in the preparation of these. As the written submissions are available in the case file, I will summarise them fairly briefly.

For the claimant

35. Under reference to ***Consistent Group Ltd v Kalwak and others 2007 IRLR 560, Autoclenz Ltd v Belcher and others 2011 ICR 1157, Pimlico Plumbers Ltd and another v Smith 2018 ICR 1511*** and ***Uber BV and others v Aslam and others 2021 ICR 657***, Mr MacMillan submitted that the claimant was asserting his right to be treated as a worker under section 230(3)(b) of the Employment Rights Act 1996 ("ERA") as a matter of statutory rather than contractual interpretation. The terms of the written agreement entered into between the parties were not determinative of the nature of the relationship.

36. Mr MacMillan distilled matters to three broad questions –

    a. Was there a contractual relationship?

    b. Did it require personal performance?

    c. Was the relationship that of client or customer?

37. Mr MacMillan argued that Mr Gilani's acceptance that there had been an *"ad hoc locum agreement"* indicated that there had been an oral contract in place between the respondent and the claimant.

38. Nothing turned on the use of the word *"locum".* Mr MacMillan referred to four Employment Tribunal decisions dealing with the employment status of locum doctors –

- ***Dr R Narayan v Community Based Care Health Ltd - 2500615/2017***
- ***Dr R Jain v Locum Reach Ltd – 2405398/2018***

- ***Dr N Couvaras v The Fine Clinic Ltd – 2202750/2020***
- ***Dr E Stockton v East Lancashire Hospitals NHS Trust – 2410279/2022***

There had, Mr MacMillan contended, been a requirement for personal performance throughout, and no right of substitution.

39. The respondent was not, Mr MacMillan contended, a client or customer of the claimant. While the claimant invoiced the respondent for his services and paid his own tax, the dates upon which he worked were determined by Mr Galani. The daily rate of pay and place of work were also determined by Mr Galani. As in ***Uber***, the claimant's position was truly one of subordination to the respondent.

For the respondent

40. Ms Veimou referred to ***Pimlico Plumbers*** and ***Autoclenz*** and addressed a number of questions –

a. *Whether the claimant could dictate when and where the work would be done.* She noted that from February 2024 the claimant had accepted or refused sessions based on his availability.

b. *Mutuality of obligation: whether the claimant was under an obligation to do the work he was given.* The claimant had been able to refuse work.

c. *Whether the respondent provided the claimant with any tools, equipment, or clothing necessary to do the work.* The claimant had used his own car and had, in effect, used his own "doctor's bag". The respondent had to provide equipment within the practice for use by other clinicians.

d. *How the claimant was paid.* He submitted invoices and was paid in accordance with being self-employed.

e. *Did the respondent deduct PAYE or National Insurance Contributions.* The claimant was responsible for his own tax and NI.

f. *Was there a duty rota requiring the claimant's attendance at certain times on certain days.* Ms Veimou accepted there had been a rota between November 2022 and December 2023 but pointed out that the claimant had been free to request changes to the rota. From February 2024 the claimant did only ad hoc shifts which were added to the rota once the claimant confirmed he could do them.

g. *Could the claimant send someone else to do the work as long as the replacement was qualified, and the respondent had completed their own checks and approved the particular individual.* Yes, Ms Veimou contended, although she accepted that this had not actually happened.

h. *Was the claimant required to ask the respondent for time off and was not paid for annual leave, commission or bonus payment.* The claimant had informed the respondent when he took time off in August 2023 and had not been paid for it or any other time he did not work.

i. *Was the claimant bound by the sickness absence rules and did he receive SSP or contractual sick pay*. No.

j. *Did the claimant have regular or assured working hours.* Ms Veimou's position was in effect "yes" for the first period and the second period but "no" for the third period.

k. *Was the claimant subject to the disciplinary procedures and/or permitted to raise a grievance.* The claimant was not subject to disciplinary procedures. Access to his patients' files was an administrative matter. Noone sat in on the claimant's consultations. The recording of telephone consultations was not done to exercise "control" over the claimant.

l. *Was the claimant required to provide his own professional insurance or, alternatively, would he purchase his insurance from the respondent.* He was responsible for providing his own insurance.

41. After the initial agreement expired in October 2023, Ms Veimou argued that the claimant was, apart from November/December 2023 and January 2024 (when he did not work for the respondent), working only ad hoc shifts for the respondent and this should be regarded as self-employment. He began to work for another organisation in March 2024 and this became his main source of income.

Applicable law

42. Section 230 ERA (**Employees, workers etc**) provides, so far as relevant, as follows –

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In the Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under) –

(a) a contract of employment, or

(b) any other contract, whether express or implied, and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

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

(4) In this Act "employer", in relation to an employee or worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment" –

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract.

and "employed" shall be construed accordingly ….

43. There is a considerable volume of case law on the issue of employment status. Ms Veimou began her written submissions by referring to ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433*** which sets out the traditional questions to be asked to decide whether someone is an employee or self-employed. However, I believed that a more appropriate place to start was ***Clyde & Co LLP and another v Bates van Winkelhof 2014 ICR 730*** where (at paragraph 39) Baroness Hale said this –

"I agree with Maurice Kay LJ that there is not "a single key to unlock the words of the statute in every case". There can be no substitute for applying the words of the statute to the fact of the individual case. There will be cases where that is not easy to do. But in my view they are not solved by adding some mystery ingredient of "subordination" to the concept of employee and worker. The experienced employment judges who have considered this problem have all recognised that there is no magic test other than the words of the statute themselves."

44. In ***Sejpal v Rodericks Dental Ltd [2022] EAT 91,*** after quoting this passage from Baroness Hale and setting out section 230(3) ERA, Tayler HHJ said this –

"10. Accordingly, for an individual (A) to be a worker for another (B) pursuant to section 230(3)(b) ERA:

a. A must have entered into or work under a contract …. with B; and

b. A must have agreed to personally perform some work or services for B.

11. However, A is excluded from being a worker if:

a. A carries on a ***profession or business undertaking; and***

b. B is a ***client or customer of A's*** *by virtue of the contract."*

Discussion

45. I reminded myself of what Tayler HHJ also said in ***Sejpal*** before quoting Baroness Hale (as above) –

"Determining worker status is not very difficult in the majority of cases, provided a structured approach is adopted, and robust common sense applied. The starting point, and constant focus, must be the words of the statutes. Concepts such as "mutuality of obligation", irreducible minimum", "umbrella contracts", substitution", predominant purpose", "subordination", "control" and "integration" are tools that can sometimes help in applying the statutory test, but they are not themselves tests. Some of the concepts will be irrelevant in particular cases, or relevant only to a component of the statutory test. It is not a question of assessing all the concepts, putting the result in a pot, and hoping that the answer will emerge; the statutory test must be applied, according to its purpose."

46. I approached matters by looking at the language of section 230(3)(b) ERA and considering how that should be applied during each of the first period, the second period and the third period.

First period

47. During the first period, the claimant worked only at Alford. There was a written agreement setting out the terms of engagement. It reflected what had been agreed between Mr Galani and the claimant, i.e. that he would work at Alford for a period of 12 months. It was drafted by Mr Galani and expressed the claimant's status as self-employed, and not employee or worker.

48. The existence of the oral agreement that the claimant would work for the respondent at Alford for a period of 12 months was sufficient to satisfy the requirement in section 230(3)(b) ERA that the claimant should have entered into a contract. The existence of the written agreement did not alter that.

49. The description of the claimant's status in the written agreement was not conclusive of that status. Mr MacMillan in his written submissions quoted Elias P in ***Kalwak*** –

"…. the concern to which tribunals must be alive is that armies of lawyers will simply place substitution clauses, or clauses denying any obligation to accept or provide work, in employment contracts, as a matter of form, even where such terms do not begin to reflect the real relationship."

"…. the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part."

Accordingly I found that the description of the claimant's employment status in the written agreement was simply one of the elements to be taken into account in determining, but was not conclusive of, that status.

50. I next considered the second limb of section 230(3)(b) – did the claimant undertake to personally perform some work or services for the respondent? The answer to this was clearly in the affirmative. The claimant agreed to work as a locum GP at Alford. I was not persuaded that the phrase *"(or any Substitute")* in the written agreement required to be interpreted as conferring on the claimant the right to delegate his work to a substitute.

51. In my view, the phrase went no further than contemplating that substitution might arise. It was used in the section of the agreement dealing with the claimant's indemnity of the respondent from liability for medical or clinical negligence. It took no account of the fact that the claimant's own indemnity insurance would not extend to the negligence of a substitute. In any event, the oral agreement which the written agreement was intended to document was self-evidently for the claimant himself to undertake work as a GP at Alford. Accordingly I found that the claimant did undertake to perform work personally for the respondent.

52. Turning to the third element of section 230(3)(b), I considered whether the claimant was carrying on a profession or business undertaking, and whether the respondent was a client or customer of the claimant. I could see the argument that (a) the claimant when practicing as a GP could be said to be carrying on that profession and (b) the respondent, as the party for which the claimant was performing work, could be said to be his client or customer. However, I was not persuaded that this was a correct analysis.

53. Applying *"robust common sense",* I decided that the respondent, by engaging the claimant to work as a locum GP for 12 months, did not thereby become his client or customer. The phrase *"profession or business undertaking"* connotes some form of enterprise. Standing back and looking at the situation of the claimant working as a locum GP at Alford, it did not have the feeling or appearance of the claimant conducting a business. It did not entail the claimant taking any commercial risk. It would be a distortion of the reality of the situation to describe the respondent as the claimant's client or customer.

54. Accordingly, I found that during the first period the claimant's status was that of worker. All elements of the section 230(3)(b) definition were satisfied.

Second period

55. During the second period, the claimant worked only at High Valleyfield. This arrangement was agreed verbally and by the exchange of messages between Mr Galani and the claimant in September 2023 (70-71). This in effect satisfied the requirement in the written agreement (for Alford) for one month's notice

(which was not specified to be in writing). That verbal agreement satisfied the first element of section 230(3)(b) ERA – there was a contract.

56. The nature of the work undertaken by the claimant at High Valleyfield was the same as at Alford. He was a locum GP. It was work which the claimant undertook to perform personally. The second element of section 230(3)(b) was satisfied.

57. For the same reasons as set out in paragraph 53 above, I found that the third element of section 230(3)(b) was also satisfied. Apart from the duration of the engagement, the claimant's work situation at High Valleyfield was the same as it had been at Alford. I did not believe that the shorter duration made a material difference – as at Alford, there was an agreement that the claimant would work for a set amount of time.

58. Accordingly, I found that during the second period the claimant's status was that of worker. Once again, all elements of the section 230(3)(b) definition were satisfied.

Third period

59. After the claimant's time at High Valleyfield came to an end there was no immediate plan for the claimant to undertake work for the respondent. The WhatsApp messages disclosed that the claimant contacted Mr Galani in January 2024 (75) looking to return to Alford. He asked if there might be *"a salaried post …. even for 2-3 sessions a week".* This was not forthcoming, and the claimant agreed to work at various practices operated by the respondent during February 2024. He then worked at Alford on various dates between March and September 2024.

60. The extent of the claimant's involvement with any single practice differed significantly from his time at (a) Alford during the first period and (b) High Valleyfield during the second period. While the claimant worked for the respondent at Alford between March and September 2024 he did so for, on average, 4 days per month. He started to work in his salaried position at

Bucksburn in March 2024 and fitted his locum work around that fixed commitment.

61. The arrangements for allocating work to the claimant were different during the third period – see paragraph 27 above. The differences were that (a) the claimant was providing his availability monthly in advance, (b) work days were then allocated to the claimant by the respondent within his available dates and (c) the claimant was able to decline work days offered to him, and did so on occasion.

62. Against that background I considered the language of section 230(3)(b) ERA. Had the claimant entered into or did he work under a contract with the respondent during the third period?

63. I reviewed the WhatsApp messages from February 2024 between the claimant and Mr Galani, and from March 2024 between the claimant and Ms Pratti. These disclosed a much more fluid arrangement than had subsisted during the first period and the second period. The respondent did not know what dates the claimant would be able to offer in any particular month and the claimant did not know what work he would be offered within his available dates.

64. I came to the view that there was during the third period (a) no obligation on the claimant to offer his availability to work for the respondent and (b) no obligation on the respondent to offer work to the claimant. There was no mutuality of obligation (a point conceded by Mr MacMillan in his written submissions).

65. Under Scots law, a contract is an agreement between two or more parties which creates or intends to create legally binding obligations between (or amongst) the parties to it. The requirement under English law for consideration does not apply in Scotland. There must be agreement on the essentials of the contract: the parties, the subject matter and the price.

66. I decided that the situation which subsisted between the claimant and the respondent during the third period did not amount to a contract. The absence

of legally binding obligations on (a) the respondent to provide work and (b) the claimant to undertake work was inconsistent with the existence of a contract. There was no more than an understanding that the respondent might have locum work available and that the claimant might be able to do that work.

67. Having found that there was no contract between the parties during the third period, it was not necessary to consider the second and third elements of section 230(3)(b) ERA and I will not do so. The absence of a contract meant that the claimant did not come within the statutory definition of "worker" during the third period.

68. For the sake of completeness I should add that I did consider the four Employment Tribunal cases mentioned in paragraph 38 above. In each of these cases a locum doctor was found to be a worker within the meaning of section 230(3)(b) ERA. It seemed to me that this served to show that the circumstances under which a locum doctor is engaged can vary from case to case. There is no rule that a locum doctor will always satisfy the statutory definition.

Disposal

69. For the reasons set out above my decision is that the claimant was a worker within the meaning of section 230(3)(b) ERA (a) between 1 November 2022 and 31 October 2023 and (b) between 1 November 2023 and 31 December 2023. He was not a worker between 1 January 2024 and 26 September 2024.

Date sent to parties **16 April 2025**