EMPLOYMENT TRIBUNALS

Claimant	**Respondents**
AB	(1) AC (2) A Company

Heard at Reading in private by CVP **On**: 9 and 10 September 2025

Before: Employment Judge Isabel Manley

Representation
For the Claimant: In person
For the Second and Third Respondents: Mr. T Wilding, counsel

RESERVED PRELIMINARY HEARING JUDGMENT

1 The claims are struck out because they have no reasonable prospect of success and are an abuse of process, matters having been determined in a Financial Remedies Order (FRO) dated 23 October 2023.

2 In the alternative, if all the claims are not struck out because of the FRO, the only claims which could have continued are claims for matters which arose after 18 October 2023.

3 In any event, the claims cannot continue because the claimant was neither a worker under the definition in section 230 Employment Rights Act 1996 or employed under the definition in section 83 Equality Act 2010.

4 The claims are dismissed.

REASONS

Introduction and issues

1 This preliminary hearing was listed in March 2025 to determine the employment status of the claimant under s230 Employment Rights Act 1996 (ERA) and s83 Equality Act 2010 (EQA) as well as the following question:

"Whether the tribunal has jurisdiction to hear the claims against both respondents in light of the Financial Remedy Order (FRO) made on 23 October 2023 and/or whether such claims should be struck out on the basis that their pursuit is, in light of that order, either unreasonable conduct or an abuse of process"

2 At the preliminary hearing in March 2025, an anonymisation order was made and the decision was that this hearing should be in private because consideration was to be given to a family court order involving minor children. Other suggestions were also made with respect to special arrangements for this hearing which were discussed and agreed during the hearing.

3 The case summary from the March preliminary hearing summarises the claims and the response as follows:

"*The claimant is Muslim and is a type 1 diabetic. The claimant is a dentist and was previously married to the first respondent. They separated in November 2020 and were divorced in April 2022. The second respondent is a dental business in which the claimant was a co-owner and in which she held a 50% shareholding until November 2023. The claimant worked in the dental business until 29 April 2024. On 23 October 2023 orders (FR)) were made by the Family Court in relation to the disposal of family property including the claimant's shares in the second respondent, which were transferred to the first respondent, and as to the termination of the claimant's employment which was to occur by 29 April 2024. The terms of the FRO are said by the first respondent to debar the claimant from bringing these proceedings.*

There is a question as to whether the claimant had at all times the necessary employment status to bring her complaints (ie whether she was an employee within the meaning of section 83 Equality Act 2010 or section 230 Employment Rights Act 1996) or whether she was at all times self-employed"

4 The claimant's claims are for religious discrimination and harassment; direct marital discrimination; discrimination arising from disability and failure to make reasonable adjustments and unlawful deduction of wages.

5 At the March preliminary hearing a comprehensive list of issues was drawn up. This shows that there remain some preliminary issues, other than the ones which are listed to be determined today. They include questions about which parts of the claims might be out of time and whether the claimant can show she has a disability. The employment judge at that hearing also discussed the potential difficulties the claimant faced with the marital discrimination claim

and this may have needed consideration at a preliminary hearing if the claim was to proceed.

6 In summary, the issue for me is to determine the claimant's employment status at the relevant times and to consider whether any of the claims can proceed in light of the terms of the FRO.

The hearing

7 The hearing was by CVP. Orders had been made for the claimant to provide bundles and for the exchange of witness statements. Before and during the hearing I received the following documents-

1) Three bundles of documents (totalling 53 pages)
2) Various single documents, including recent emails sent to the tribunal
3) Cross examination questions drafted by the claimant and amended
4) Witness statement for the claimant
5) Witness statement for the first respondent
6) Witness statement for a practice manager
7) A skeleton argument from the respondents' representative
8) Bundle of documents for the respondents' representative's submissions (71 pages)

8 I heard evidence from the claimant, the first respondent and the practice manager. In line with the suggestions made at the March preliminary hearing, the claimant, who remained unrepresented, had sent questions she wanted to ask the first respondent as it had been agreed that they could be asked by the employment judge. I took the view that I needed to discuss some of those questions with the claimant and gave her reasons for my decision to slightly amend one or two and not to ask those that were not questions of fact but went to legal interpretation. The claimant asked for more questions to be added after her cross examination and that was agreed. In total there were around 50 questions. As is usual, I also asked questions of all the witnesses. The practice manager's evidence was very short and I checked with the claimant what questions she had for that witness.

9 I then heard oral submissions from the respondents' representative. I had pointed out to the claimant that her witness statement contained many of the submissions that might be expected in that she had set out her belief that she had the requisite employment status and that the FRO could not restrict her statutory and human rights. She added to that briefly by providing some background to the reasons that she brought this claim. I had determined that I needed to reserve judgment, not least because the issues were complex.

Facts

10 The central facts were set out in the Case Summary from the March preliminary hearing. This reads:

"The claimant is Muslim and is a type 1 diabetic. The claimant is a dentist and previously married to the first respondent. They separated in November 2020 and were divorced in April 2022. The second respondent is a dental business in which the claimant was a co-owner and in which she held a 50% shareholding until November 2023. The claimant worked in the dental business until 29 April 2024. On 23 October 2023 orders (FRO) were made by the Family Court in relation to disposal of matrimonial property including the claimant's shares in the second respondent, which were transferred to the first respondent, and as to the termination of the claimant's employment which was to occur by 29 April 2024".

11 I do need to now set out some additional facts. I am finding facts relevant to the issues I am required to determine and avoid those which are either matters which are relevant for any hearing of the substantive claim or go to extraneous matters between the parties.

12 The claimant and first respondent are both dentists and they bought what is now the second respondent dental practice in 2005. They have two children who are now teenagers. The claimant and the first respondent had 50% shareholdings each in the second respondent company with the claimant being named as company secretary and the first respondent as director. Both of them worked as dentists in the business which treated both NHS and private patients. Neither the claimant nor the first respondent had any written contracts relating to their work as dentists, either as employees or as associates with the standard British Dental Association (BDA) associate agreements. Others working in the business from time to time, such as the manager and nurses, had employment contracts whilst other dentists worked under BDA associate agreements.

13 The claimant carried out other duties as well as dentistry. She was involved in grievance and disciplinary matters, as well as being the compliance officer for CQC.

14 The claimant attended work during opening hours but that was amended when she needed to carry out childcare duties, such as picking the children up from school. I find that those arrangements were made after discussion with the first respondent. As a professional person, the claimant carried out her dental work without needing any instruction. The dental business provided the necessary equipment. When the claimant was on maternity leave, her dental work was covered by a locum dentist and by the first respondent or other dentists.

15 I heard evidence about what seemed to be relatively complex financial arrangements as between the second respondent business and the claimant and first respondent's family expenses. To some extent these arrangements changed with separation, divorce and the FRO in 2023.

16 It was agreed that the claimant would receive 50% of fees from NHS and private patients and I understand she was paid a monthly of £747.69 through PAYE which was designed to be under the threshold to pay income tax of £12,500. The accountant who prepared accounts for the second respondent and both the claimant and first respondent up to 2023 referred to this payment as being for employment, commenting that there was self-employment and employment for the claimant. Many items of family expenditure were paid via business linked accounts into which sums were paid by the business towards future corporation tax and individual tax liability.

17 The claimant and first respondent separated in 2020 and were divorced in 2021 but many of the existing arrangements continued because the claimant remained in the family home with the children.

18 One of the bank accounts was a Handelsbanken account from which the claimant withdrew the sum of £22,500 on 12 August 2022 without consent. That account was a joint account in the name of the claimant and the first respondent and I accept that it was expected to go towards joint expenses and tax liability. The first respondent says, and I accept, that this significant withdrawal caused considerable difficulties as tax was due.

19 I have seen parts of the tax returns for the claimant for the years ending April 2021 and 2022 and a letter from accountants with respect to the tax year ending April 2023. The calculations prepared by the accountant show a sum of £150,000 for dividends in the 2021 year, a sum of £52,000 as profit for 2022 and a sum for profit of £57,000 for 2023.

20 The claimant's case, as I understand it, was that she did not receive those sums described as dividends or profits and that all the financial arrangements were made by the first respondent. I accept that those sums went through the second respondent's accounts towards the family's expenses such as school fees, the matrimonial home mortgage, the claimant's car and utilities. I have seen a Notice of Enquiry from HMRC about tax arrangements which is dated in 2025 which makes reference to dividends but that is a matter for resolution with the tax authorities.

21 In April/May 2023 a dispute arose as the respondents sought to alter the percentage commission for associates and included the

claimant in an email about that. She disagreed with the proposal and on 14 May 2023 said this:-

"*I am not an associate. I am a 50% shareholder, which means I own half the company*".

22 She went on the say the associates were the two other dentists working in the practice, not suggesting that either she or the first respondent were associates.

23 On 18 October 2023 the claimant and first respondent attended the Family Court sitting in Slough and on an order was made which I understand was dated 23 October 2023. I have been shown a standard FRO by the respondents' representative and those orders reflect some of those orders although they are also, of course, specific to the situation between the parties to this matrimonial dispute.

24 The FRO has a standard warning about being in contempt of court if there is a failure to comply with the order. It recites the parties and contains some definitions. The first respondent was the applicant in these proceedings and the claimant was the respondent.

25 Under "*Recitals"* there appears an introductory recital as follows:

"9 The parties agree that the terms set out in this order are accepted in full and final satisfaction of:

a. All claims for income;
b. All claims for capital, that is payments of lump sums, transfers of property and variations of settlements;
c. All claims in respect of each other's pensions;
d. All claims in respect of the contents of the family home and personal belongings;
e. All claims in respect of legal costs including those of the divorce proceedings;
f. All claims against each other's estate on death; and
g. All other claims of any nature which one may have against the other howsoever arising either in England and Wales or in any other jurisdiction"

26 Further relevant paragraphs appear at paragraph 20 where the claimant undertook to transfer her shares of the second respondent to the second respondent. Paragraph 25 is headed *"Company resignation and transfer of shares*". The relevant sub-paragraphs are at 25a, b and d which read:

"a The respondent shall resign her employment as an associate dentist with (the second respondent) forthwith such resignation to take effect on or before 30th April 2024 (for the avoidance of doubt

the respondent will be employed no later than 30 April 2024 whenever she resigns). The parties agree that from 18 October 2023 until the date her employment is terminated the respondent will receive one half of the fees paid by the NHS and private patients who she treats during that period by way of her remuneration from (the second respondent)

b. The respondent shall resign forthwith as company secretary of (the second respondent) and the applicant agrees to provide the respondent with the relevant paperwork to facilitate her resignation.

d. The respondent acknowledges that she has no claim against (the second respondent) arising out of the termination of her employment or otherwise save in respect of the indemnity at sub-paragraph e below". (That sub-paragraph e. related to a directors' loan and dividends and an indemnity from the first respondent)

27 The claimant has not appealed any of the parts of the FRO relevant to this claim but I understand she has instituted other appeals which are ongoing. In accordance with the FRO, the claimant's 50% shareholding was transferred to the first respondent either in November or December 2023. Similarly, some of the paperwork for her removal as company secretary is a little confusing as she signed on 18 October 2023 for removal but it may not have been processed until 15 February 2024. This might simply be the dates matters were formalised.

28 From 18 October 2023 the claimant continued to work as a dentist at the second respondent receiving 50% of fees until she stopped working on 29 April 2024. I have seen a statement for April 2024 which shows what the claimant was owed by the second respondent, shown as a gross sum with deductions for insurance and so on (not for income tax). There have been other subsidiary issues as she was the nominated manager for CQC compliance purposes and, it appears, she still needs to fill in the necessary paperwork for that to be changed.

29 The claimant presented the claim on 6 August 2024, having started ACAS early conciliation on 27 May 2024 with the certificate being dated 8 July 2024. The list of issues from the March preliminary hearing records that the claims are for disability discrimination and failure to make reasonable adjustments, both relating to a single incident in March 2024; direct marital discrimination for 12 matters between 2022 and April 2024 and direct religious discrimination for one matter in August 2022 and another in January 2024. There is also a claim for unauthorised deduction of wages between February 2022 and April 2024 amounting to £39,199.

The law and submissions

Employment status

30 There is agreement between the parties as to the tests to be applied when considering whether someone was self-employed, a worker under section 230 ERA or employed under section 83 EQA.

31 The starting point for considerations of whether an individual was an ERA worker is the statutory definition as follows:-

32 Section 230(3) ERA provides that –

"In this Act "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;"

33 Some of the tests remain as set out in Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance [1968] 2 QB 497 ("Ready Mixed"). Using the language of common law (some of which is now very outdated) about the distinction between those who agree to a contract of service (an employee), as opposed to those who agree to provide a contract for services (a self-employed person), that case might be considered a starting point. It does not deal with the question of who might be a worker, that definition not being in existence at the time.

34 In summary, Ready Mixed states there are three central elements – an agreement for the "*servant"* to provide work or skill to their *"master*" in return for wage or other remuneration; that, in the performance of that work, the "*servant*" agrees to be subject to a sufficient degree of control and other provisions of the agreement are not inconsistent with a contract of service.

35 The law has moved on considerably since Ready Mixed, which was, in any event, concerned with status for tax purposes. The tribunal is now required to consider all relevant factors so that an overall picture can be seen.

36 Some factors might be considered to be of central importance. There is the "*irreducible minimum*" confirmed in Carmichael v National Power plc [1999] ICR 1226. Those are personal service (and no right of substitution); control and mutuality of obligation.

37 Much of what has been set out above does also apply to **worker** status. For some people who cannot show they have a contract of employment, they may still be able to show worker status as long as the statutory language of section 230 (3) b) ERA applies to them. In essence, this is the need to show personal service, where any right to substitute may be relevant, and that the other party to the contract is not a client or customer of the individual.

38 Providing personal service is a condition for being defined as a worker under section 230 (3) b) ERA. I was reminded of the case of Pimlico Plumbers Limited v Smith [2017 EWCA Civ 51 and [2018] UKSC 29 which discussed the need for personal service and how any contractual right to substitute might impact on that need. In particular, it is clear that an unfettered right to substitute would be inconsistent with worker status. Much will depend on how conditional any right to substitute is in the agreement and in practice.

39 In Uber BV and others v Aslam [2021] UKSC 5, the Supreme Court was also looking at worker status and, having mentioned the need for the "*irreducible minimum*", at paragraph 126, this is said:-

"In other words, the existence and exercise of a right to refuse work is not critical, provided there is at least an obligation to do some amount of work".

40 Where there are written documents which are clear and indicate agreement by both parties, this will provide a strong indicator of what the employment status is. Where there is no written contract or agreement, that might also be an indicator that the parties did not intend there to be either an employment contract or a worker contract. In any case, it may be necessary to have oral evidence about the various relevant aspects as set out above.

41 As can be seen, some cases have dealt with the question of an individual's status for income tax purposes. This may well be strongly indicative but may need to be considered with all the other circumstances. It does not determine the employment status for employment rights purposes (see Young & Woods Ltd v West [1980] IRLR 201 and, more recently, Richards v Waterfields Ltd [2023] IRLR 145).

42 In this case, where the position is that the claimant was a major shareholder, the determination is likely to involve other questions about her position as an owner or co-owner of the second respondent. It does not necessarily exclude the possibility of her being an employee or a worker but needs enquiry into whether the arrangements suggest she was self-employed, being in business on her own account.

43 As the claimant is also bringing discrimination claims, Section 83 (2) EQA is relevant. That reads:

"Employment" means –

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work"

44 As was pointed out at the March preliminary hearing, the definition of worker and employment under EQA are essentially the same. In Dr S Alemi v Mitchell and Orton Bushfield Medical Practice UKEAT0042/20, that those definitions both "*exclude those who are genuinely in business on their own account and undertake work for their clients or customers".*

45 The respondents' representative also referred me to Autoclenz Ltd v Belcher and others [2011] UKSC 41 and I was reminded that I need to analyse the agreement between the parties but that case was primarily concerned with looking at the written agreement and whether it was genuine.

46 Several cases have considered the employment status of dentists. In Sejpal v Rodericks Dental Limited [2022] EAT 91, the EAT decided that the employment tribunal had erred in deciding that the claimant, who had a written associate agreement was not a worker. However, two remaining questions about whether the claimant carried out a profession or business undertaking and whether the respondent was a client or customer of that profession or business were remitted to be decided. As stated, the claimant in this matter had not signed any associate agreement as others in the practice had, nor any other written agreement.

47 Other cases to which I was referred by the claimant, perhaps having been suggested by AI, were first instance or EAT decisions where there had been written contracts. As has been stated on numerous occasions, I must approach matters by examining the statutory language and analysing the facts as they apply to those tests.

48 In summary, I must consider whether there was a contract (of employment or otherwise) for work to be done personally (within that considering any right to substitute) before I move on to consider the questions arising under the second part of section 230 (3) b) as to whether the second respondent was a client or customer of the claimant's profession or business undertaking.

The impact of the FRO

49 This question is an unusual one for the employment tribunal. The parties do not necessarily agree on what the tests are and there are appear to be no cases directly on the point to provide guidance.

50 I start with the statutory provisions in s 203 ERA which places restrictions on contracting out for matters brought to the employment tribunal under ERA, which are, in this case, the unauthorised deduction of wages claim. Section 203 (1) ERA reads:

"(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports –

(a) to exclude or limit the operation of any provision of this Act, or
(b) to preclude a person from bringing any proceedings under this Act before an employment tribunal"

51 There then appear at sub-paragraphs (2), (3) (4) and (5), various exceptions to that restriction so as to provide for settlement agreements and ACAS agreements, known as COT3, to restrict access in certain circumstances.

52 Similar restrictions appear at sections 144 and 147 EQA, with section 144 EQA referencing contractual terms and similar provisions being made for settlement agreements with specified conditions.

53 As far as I can see, there is no direct reference to court orders in either Act but the question arises as to whether the principle of **res judicata estoppel** would apply in this case. I will come on to that principle shortly.

54 The claimant referred me to three cases, one of which, Gilbert v Department of Health [2010] IRLR 830, probably does not exist and certainly could not be found by myself or the respondents' representative. The claimant accepted that she had used AI (ChatGBT) for her submissions which probably led to an error with that and with respect to another case she referenced - Palihakkara v BT, in that an incorrect citation was given suggesting it was a 1997 case. There is a case Palihakkara v British Telecommunications plc [2006] UKEAT 0185/06 which confirms that the wording of a settlement agreement needs to be certain about which claims have been compromised for it to prevent a claim to the tribunal. In that claim, the clause in question referred to the termination of employment so that the claimant could proceed with other matters, namely race and sex discrimination not connected to termination of employment. The other case the claimant mentioned was Hinton v University of East London [2005] EWCA Civ 532. This again confirms that any settlement agreement, to be effective under section 203 (3) ERA, needs to accurately specify the claims which have been settled.

55 In short, the claimant says the respondents cannot avoid the tribunal proceedings because of the FRO as it is not a valid settlement agreement under either ERA or EQA. She is pursuing statutory rights and the Family Court has no jurisdiction in relation to employment law matters. She submits it would undermine those statutory rights to prevent her bringing these claims.

56 The respondents' case is that the FRO does prohibit the claims from proceeding under the res judicata or cause of action estoppel principles. I was referred to the case of Allsop v Banner Jones Ltd (T/A Banner Jones Solicitors), Rae Cohen [2021] EWCA Civ 7, in particular paragraphs set out below. There are some similarities with this employment tribunal case in that that case also considered the effects of a FRO after the claimant (in that case) and his ex-wife had been going through divorce proceedings. Those similarities really stop there as the issue was whether Mr Allsop's claim should have been struck out as against the named respondents above when the FRO related to him and his ex-wife. His case had been struck out as an abuse of process under Civil Procedure Rules 3.4 (2) b). Where the case is useful is where the Court of Appeal remind me of the res judicata principles.

"*21. A res judicata is a decision pronounced by a judicial or other tribunal with jurisdiction over the cause of action and the parties, which disposes, once and for all, of all the fundamental matters decided, so that, except on appeal, they cannot be re-litigated between the persons bound by the judgment. A party to a res judicata will be stopped, as against any other party, from disputing the correctness of the decision, except on appeal. This is known as "cause of action estoppel". The same is true – save to a narrower extent – of "issue estoppel". A final decision will create an issue estoppel if it determines an issue in a cause of action as an essential step in its reasoning".*

23. Res judicata estoppel has as its rationale the importance of finality in judicial decision making. In The Amptill Peerage Case [1977] AC 547 at 569, Lord Wilberforce put the point as follows;

"English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the rights of citizens to open or reopen disputes…….Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security, it prevents further inquiry……"

57 In summary, my task with respect to this question is to consider whether I should strike out the claim, which I have the power to do under Rule 37 (1) (a) Employment Tribunal Rules 2024 on the grounds that it is "*scandalous or vexatious or has no reasonable prospect of success*". A claim which is an abuse of process would fit into this definition.

Conclusions

58 This is a difficult matter for a number of reasons. First, the financial and administrative arrangements between the parties to this dispute were rather complex and interlinked, perhaps not unusually for a family business, and particularly as between a married couple owing a joint business.

59 Secondly, the financial and administrative arrangements between the parties have changed over time from 2020 to when she ceased working at the practice in April 2024. There was the separation in 2020 and divorce in 2022. Some relevant events occurred in 2022 leading up to the FRO in October 2023.

60 Thirdly, a further potential difficulty arises because there was an inbuilt delay between the date of the FRO and the date when it provided for the claimant to stop working at the practice. Some, but not all, of the claimant's claims refer to matters which took place between October 2023 and April 2024. Others pre-date the FRO.

61 I first consider the impact of the **FRO** on these proceedings. I must decide whether allowing the claims to proceed amounts to an abuse of process because it is subject to the res judicata estoppel principle and, if it is, whether to strike out the claim. The claimant's case is that the FRO cannot prevent her claims from proceeding as such a restriction is not allowed under provisions in both ERA and EQA.

62 I first consider the wording of the paragraphs in the FRO.

63 Paragraph 9g is taken from the standard orders which I have seen. It is clear and unambiguous. I take the view that, as the FRO goes on to determine and make orders about the claimant's involvement with the second respondent, it covers any claims arising out of that involvement, including her work as a dentist at the second respondent. That prevent her bringing any claims, including this employment tribunal claim against the first respondent, as at the date of the FRO.

64 Two questions remain though. The first is whether paragraph 9g prevents a claim against the second respondent (which was not a named party in the family court proceedings) and the second is whether it is also effective for matters that arose after the date of

the order. I consider that after I discuss the other relevant paragraphs of the FRO.

65 Paragraph 20 is only concerned with the transfer of shares so that, from 18 October (or perhaps slightly later) the claimant was no longer as clearly a co-owner of the second respondent. It is true that some outstanding matters remained, such as her remaining as compliance officer for CQC and the delays in the formalities of removing her as company secretary.

66 Paragraphs 25 a, b and d are directly relevant to the claimant's involvement with the second respondent. Paragraphs 25 a and b provided that she was to resign before 30 April 2024. Although the order uses the word "*employment"*, I do not consider that means that there was any decision about employment status but was simply a way of describing her work as a dentist. From 18 October 2023 until she left in late April 2024, in line with the order, she was paid half of the fees she collected, less any necessary deductions for professional fees and insurance. Paragraph 25b provided that she will resign as company secretary which occurred in November or December 2023.

67 Paragraph 25d provides that the claimant has no claim against the second respondent arising out of termination of employment. Whilst the respondents rely on this clause, I note that the claims the claimant brings are not claims arising out of *termination* of employment. They are claims for matters arising *during* the last two years of working for the second respondent.

68 I am looking at these paragraphs together to assess whether the res judicata estoppel principle might apply. The respondents argue that the FRO is a settlement of all claims, being a "clean break" order, anticipating both pre-existing and future complaints. That is true to a certain extent when I look at the wording of paragraph 9g and 25d which appear to anticipate any future disputes or claims.

69 I have considered this very carefully as parliament in passing the sections in ERA and EQA was concerned that people's rights to bring a claim should not be restricted except in limited circumstances and with adequate protection. Clearly there is no settlement agreement of COT3 here so, there is no bar to the claimant pursuing the claims for those reasons.

70 However, in these circumstances and, having read all the relevant FRO paragraphs together, I have decided that the res judicata estoppel principle does apply. The FRO was clearly meant to be an order which determined issues between the claimant and the first and second respondent with respect to her ownership of and work for the second respondent. I have also decided that it intended for matters concerning the claimant and the second respondent

business be brought to a close as well as between the claimant and first respondent. It is a determination of those issues at the date of the order and up to the point the claimant stopped working there.

71 If I am wrong in that decision, any claims must be limited to matters which occurred after 18 October, which are only some of the discrimination and unlawful deduction of wages claims.

72 The claimant's pursuit of these claims amounts to an abuse of process and she has no reasonable prospect of success, bearing in mind what the FRO ordered. The claims are struck out.

73 Although, not strictly necessary but, in case, I am not correct in my findings on the issue above, I now turn to consider the question of what was the claimant's **employment status**.

74 This is also a rather complex question because there is a possibility that her status changed over time as she gave up some official involvement in the second respondent and worked as a dentist between October 2023 and April 2024.

75 It is quite clear to me that, for the period before the FRO, the claimant was in business on her own account.

76 I am satisfied that she provided personal service throughout her work with the second respondent as a dentist. She had no written document but there was an oral agreement (later overtaken by paragraph 25a of the FRO for her to work as a dentist and receive 50% fees). I do not consider there was any subordination, particularly before October 2023, as the claimant was a co-owner and considered herself to be so. She was not subject to the disciplinary procedure and was herself one of the people who decided on applying disciplinary procedures to members of staff. Although the second respondent supplied all the necessary equipment, the claimant was not subject to any control by the first or second respondent, save for any professional standards and CQC issues.

77 The claimant was in business on her own account, being taxed on the basis of dividends and/or profits (except for the PAYE sum under the income tax limit). The second respondent business ran for the benefit of her and her family and continued in that way up to October 2023. This is shown not just by her clear statement at paragraph 21 above but also the withdrawal of a substantial sum in August 2022 from an account that was closely connected to the business. She was, at least up to October 2023, carrying out a profession with patients at the second respondent as her client or customer.

78 The question that arises is whether that status changed to one of worker from October 2023. In line with the FRO, as stated above, the claimant's involvement as co-owner reduced as her 50% shareholding was transferred, she resigned or was removed as company secretary until she stopped working in April 2024.

79 I find that her employment status did not change. Whilst she was no longer a co-owner by the time she stopped working, she was still carrying out a profession and the second respondent paid her for that work at the rate in the FRO, as it had been before of 50% of fees, as her client or customer. She remained in business on her own account, without still being a co-owner of the second respondent. In other words, she was self-employed throughout the period of the claims before the tribunal and those claims cannot proceed.

80 In summary, the claims cannot proceed because the principle of res judicata estoppel has led to them being struck out. Even if that is found to be wrong, they are struck out because she cannot show she was a worker or employed for the purposes of the ERA and EQA.

Approved by

Employment Judge Isabel Manley

Dated 17 September 2025

Sent to the parties on:

19 September 2025

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For the Secretary to the Tribunals