Neutral Citation Number: [2025] EAT 142

Case No: EA-2024-000812-BA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 7 October 2025

Before:

HIS HONOUR JUDGE AUERBACH

- -

Between:

PARTNERSHIP OF EAST LONDON CO-OPERATIVES LTD	**Appellant**
- and -	
JOANNE MACLEAN	**Respondent**

- -
- -

Andrew Watson (instructed by Kennedys Law LLP) for the **Appellant**
The **Respondent** appeared in person

Hearing date: 11 September 2025

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JUDGMENT

SUMMARY

EMPLOYEE, WORKER OR SELF-EMPLOYED

The respondent is an Industrial and Provident Society which provides healthcare services at community urgent treatment centres (UTCs). The claimant is a qualified nurse who did work as a Clinical Streamer at UTCs run by the respondent during the period from August 2018 until she terminated the arrangement in March 2023. The employment tribunal found that the claimant was both a worker and an employee of the respondent. The respondent appealed on three grounds.

(1) The employment tribunal did not err in concluding that the respondent's contract was with the claimant and not her limited company. It properly relied upon evidence which supported that conclusion and it did not fail to consider other evidence pointing against it.

(2) In support of its conclusion that the claimant was an employee, apparently throughout the period of the relationship, the tribunal found that the "natural inference" from the facts was that the claimant agreed to undertake at least a reasonable amount of work and the respondent undertook to offer at least a reasonable amount of work or pay. The tribunal relied upon the fact that the claimant worked regularly for the respondent for a number of years. Having regard to findings that relevant documentation expressly stipulated that there was no obligation on the respondent to offer monthly shifts, and no obligation on the claimant to accept them, and as to the system by which monthly shifts were bid for and allocated, that conclusion was insufficiently supported or explained. There was also a potential conflict with the apparent finding that the claimant was a worker "each time she accepted work".

(3) The tribunal's conclusion that the necessary obligation of personal service was not negated by an ostensible right to send a substitute, because substitution would have been impracticable, was insufficiently supported or explained.

HIS HONOUR JUDGE AUERBACH:

Introduction

1. This is the appeal of the respondent in the employment tribunal from the decision of Employment Judge C Lewis, arising from a hearing at East London Hearing Centre, that the claimant was both its worker and its employee. I will refer to the parties as they were in the tribunal.

2. The respondent is an Industrial and Provident Society which provides healthcare services at four community urgent treatment centres (UTCs) in East London. The role of a Clinical Streamer, in the words of the tribunal, is to carry out an initial clinical assessment of a patient arriving at a UTC, so as to place them in the correct queue for the care or treatment that they require. The claimant is a qualified nurse. She did work as a Clinical Streamer at UTCs run by the respondent during the period from August 2018 until she terminated the arrangement in March 2023.

3. Thereafter the claimant brought an employment tribunal claim. She raised complaints of ordinary unfair constructive dismissal, unfair constructive dismissal and detrimental treatment by reason, or on grounds, of protected disclosures, and claiming contractual and statutory holiday pay. To be entitled to brings these complaints, she needed to have been, depending on the complaint, an employee or a worker of the respondent, as defined in section 230 **Employment Rights Act 1996** and/or the **Working Time Regulations 1998**. The respondent contended that she was neither. A substantive preliminary hearing was listed to determine that status issue. The claimant represented herself at that hearing. The respondent was represented by Andrew Watson of counsel.

The Employment Tribunal's Decision

4. In the opening section of its decision the tribunal summarised the parties' respective cases:

> **"8. The Respondent's position is that it uses a combination of employed clinical streamers, bank staff who are also employees, and self-employed contractors at its four UTC's. It says that the Claimant worked as a self-employed contractor and performed her work through her personal service company Maclean J Limited. The Respondent submits that this is consistent with how both parties behaved throughout the contract and as set out in the Respondent witness statements and with what both parties told HMRC. The Claimant's position is that**

> **she was an employee of the Respondent: she maintains that she applied to work as a bank employee and only set up the company Maclean J Limited at the behest of the Respondent and as a vehicle for payment only."**

5. The tribunal noted at [11] that in further discussion after an initial reading break the claimant

> **"…clarified that her case was that she was employed as a bank employee but paid via a limited company. She accepted that she had always been responsible for her own tax and national insurance payments and that she had been aware that she would be paid more if she was paid via a limited company."**

6. The tribunal recorded that the claimant had indicated prior to the hearing, that she did not intend to produce a witness statement, and had assured the respondent's solicitors that she understood the implications of this stance. At the start of the hearing, the judge noted this, and that the claimant bore the burden of showing that she had been an employee or worker. She confirmed that she did not wish to give evidence and indicated that she would rely on the documents in the hearing bundle.

7. In a further discussion, following the tribunal's reading break, Mr Watson indicated that the respondent's stance was that the claimant had no evidence to support her case. The claimant then applied for a postponement to allow her time to prepare a witness statement. The respondent opposed that application. After a further break in which the pre-hearing correspondence on the subject of witness statements was provided, the judge gave an oral decision refusing the claimant's application. There has been no appeal or cross-appeal by the claimant from that decision.

8. At the start of a section headed "Evidence and findings" the tribunal noted that it heard from two witnesses for the respondent: its CEO, Steve Rubery, and Sonia Gangapatnam, whose role at the time when the claimant started had been HR advisor.

9. The tribunal continued:

> **"15. Ms Gangapatnam gave the following evidence: The Claimant completed an application form [page 41] as a result of an expression of interest in the role. It was not advertised on the NHS jobs website as individuals heard about the role through word of mouth and contacted the Respondent to apply. Miss Maclean approached the Respondent and expressed her interest in the position and as with all individuals who expressed an interest, she was asked to complete an application form with her details, the Respondent provided the Claimant with a standard**

NHS application form described as an "Application for Employment" with the Respondent. Although the initial email dated 17 August 2018 [39] refers to enrolling in the Bank, Miss Gangapatnam maintained that the form was simply used to obtain the relevant information and did not determine the status of the individual's working relationship with the Respondent. Miss Gangapatnam told me that Miss Maclean subsequently confirmed that she chose to be a self-employed contractor through her personal service company and she was therefore not ever provided with a contract of employment and has not ever been paid through PELC's PAYE system. Miss Maclean did not attend an interview and the document at page 119 is a checklist with standard requests for documents for contractors as well as employees. As far as Ms Gangapatnam was aware all self-employed contractors are paid the same hourly rate.

16. The Respondent relies on the payment authorisation declaration provided by the Respondent to the Claimant and signed by her as evidence of the agreement between them [p 47]. The declaration is on PELC headed paper and sets out the authorisation in the following terms:

> **"I authorise and request the Partnership of East London Co-operatives Ltd ("PELC") to pay all sums due to me to the account below until further written notice**
>
> **[account details]**
>
> **I agree that payment to MACLEANJ LTD will discharge any liability owed by PELC to me.**
>
> **I acknowledge that the Members Agreement under which I provide clinical services is strictly between PELC and myself as an individual NURSE member of the Society" [emphasis added]**

it was signed by the Claimant as Joanne Maclean and dated 7 November 2018.

17. Miss Gangapatnam told me that the terms of the Claimant's engagement are set out in the Members Agreement, an example of which was in the bundle [143-154]. She acknowledged that the example in the bundle referred to doctors but told me that at the time there was not a separate agreement in respect of nurses and the Agreement was applied to nurses with the substitution of the NMC and professional obligations and qualifications relevant to nurses for those applicable to doctors. Miss Gangapatnam accepted that it was possible that the Claimant had requested a copy of the Members Agreement but that she had not retained a signed copy, but pointed to the pay declaration returned on the 7th of November 2018 [page 47] in which Miss Maclean acknowledged the application of the Members Agreement. Miss Gangapatnam told me that at the time of the Claimant's appointment there was no separate service contract in place for self-employed nurses and the doctor's members agreement would have been used. She did not accept that the Claimant was employed as a bank worker (i.e. an employee for the Respondent's purposes). She told me that the Claimant would have been responsible for providing an induction/ orientation to any substitute she provided as well as being responsible for ensuring they held the relevant qualifications and registration; she accepted that Mr Rubery's evidence in his statement suggested that the Claimant had not ever provided a substitute and she was not aware of any occasion when she had, nor could she suggest any circumstances when she might have done so.

18. As already noted, the draft Members Agreement in the bundle is described as an agreement between the Respondent and a doctor. It is headed as follows:

> **"THIS AGREEMENT is made the [blank] day of [blank] 20[blank]**
>
> **BETWEEN**
>
> **[The Respondent]**
>
> **and**

Dr [blank]

GMC Number [blank]

of (address)[Blank]

(The "Member")"

19. Relevant clauses of the agreement include the following:

"1. Background for Members

1.1 [description of the Respondent]

1.2 The Member is a fully registered medial practitioner whose name appears on the current list of the General Medical Council, and who has fulfilled the requirements for the granting of and has been granted a certificate of Prescribed or Equivalent Experience by the Joint Committee for Post Graduate Training for General Practice under the Vocational Training Regulations, and whose name currently appears on the Performers' List of a Clinical Commissioning Group.

1.3 The Society appoints the Member and the Member agrees to act as a Member Primary Care Physician. Only members of the Society can provide clinical services to the Society and the obligations of the Member in this agreement cannot be delegated.

1.4 This Agreement is for the provision of clinical services by the Member to the Society.

…

2 Terms of contract

3 [obligations on Member to amongst other things provide evidence of current registration and license to practice with GMC; current professional indemnity insurance; proof of appointment to CCG Performers' List; satisfy enhanced DBS disclosure; report any change in professional status/ potential disciplinary matters; observe GMC professional conduct rules; preserve patient confidentiality]

4 Allocation of Sessions

4.1 The Society shall invite the Member to bid for the personal provision of clinical services … to patients … on an "as and when needed" basis as a self-employed sub-contractor to the Society.

4.2 The Member shall be offered the opportunity to provide clinical services to patients by personally undertaking clinical sessions on the roster for Members of the Society, according to need as determined by the Executive of the Society and at the sole discretion of the Society.

…

4.4 The Society is not obliged to offer the Member any sessions and the Member is not obliged to accept any sessions that are offered.

4.5 A roster will normally be published on a monthly basis listing the session are available for the following month.

…

6 Duration of Sessions

…

> **6.2 For the avoidance of doubt, the Working Time Regulations 1988 ("the Regulations") do not apply to the Member as a self-employed contractor….**
>
> **…**
>
> **14 Status of the Member**
>
> **14.1 In view of the fact that the Society is under no obligation to offer the Member work and the Member's ability to decline work that is offered by the Society the Member and the Society agree that during this appointment, the Member shall be a self-employed contractor and not an employee or worker of the Society.**
>
> **14.2 The nature of the arrangement under which the Member provides clinical services through the Society is that the Member exercises his or her profession on the Society's premises or for patients referred by the Society. The Member is not subject to directions from the Society in the exercise of his or her profession and shall not be subject to direction from the Society except as set out in this Agreement.**
>
> **14.3 In consequence of the Member's status as set out in clause 14.1 above, it is agreed that:**
>
> > **14.3.1 The Member shall not be entitled to any holiday entitlement or holiday pay (either statutory or Society holiday entitlement and pay):"**
>
> **…**
>
> **Further provisions include at 10 for submission of monthly invoices and at 15 for Member to maintain adequate indemnity insurance and at 19 a whole agreement clause."**

10. The tribunal then said:

> **"20. I find that there was a direct contract between the Claimant personally and the Respondent. The agreement to accept payment to MacleanJ Ltd was expressly stated to be in discharge of any liability to make payment to the Claimant in relation to the service provided by her personally. The Members Agreement sets out at Clause 1 the personal nature of the agreement between the member i.e. the doctor, or in this case the nurse, and the Respondent and makes no reference to the Claimant's company."**

11. The tribunal referred to Ms Gangapatnam's evidence that the claimant was required to produce training certificates to comply with CQC requirements, but this training was provided by the NHS and undertaken on her own time; and that one-to-one meetings were to ensure her ongoing compliance with regulatory obligations which applied to anyone performing this role, and not for career development or performance assessment.

12. The tribunal continued:

> **"24. On the 7th of February 2021 the Claimant emailed the Respondent a completed IR35 status check form [66-69] which the Claimant had been asked to complete by the Respondent. The Respondent places reliance on the IR 35 checks as evidence of the Claimant's status as a**

self-employed contractor. The result produced was that the off payroll working rules (IR 35) did not apply; the reason for this result was that the Claimant had given answers stating :"

> **• [the Respondent] has accepted or would accept a substitute**
>
> **• you or your business will have to fund costs before your client pays you.**
>
> **This suggests you are working on a business to business basis**

The completed form with the answers provided by the Claimant is at page 67 the answers include the following:

> **"Who are you? Worker**
>
> **Do you provide your services through a limited company partnership or unincorporated association? yes**
>
> **Have you ever sent a substitute to do this work? -yes, your client accepted them**
>
> **Did you pay your substitute- yes"**

An additional questionnaire was also completed [70] the answer sheet provided by PELC states:

> **"It is PELC's expectation that you (or your limited company) will provide a substitute if you are unable to complete work agreed and you (or your limited company) will be expected to pay the substitute."**

The Claimant signed and dated this document on the 5th of April 2021.

25. The Respondent completed a version of this document on the 6th of April 2021 [page 72] the answer to the question has the worker ever sent a substitute to do this work was "no it has not happened".

26. The IR 35 status determination completed by the Respondent [at page 76 to 77] describes the employment as starting on 6th of April 2021 and that the engagement falls outside IR 35 and is therefore self-employed for tax purposes. It provides 11 numbered reasons for that determination, including:

> **"1. Substitution - This outcome is on the basis that PELC has established that you have the right to provide a substitute to complete the work that has been booked. This means that you are able to get another clinical individual of the same qualification and experience to complete the session booked with PELC.**
>
> **PELC will make payment to your limited company and it will be the responsibility of your limited company to pay the substitute.**
>
> **…**
>
> **4 Control – The determination is made on the basis that you (contractor) work in various areas depending on where you have chosen to book a shift.**
>
> **5 Mutuality of obligation - This determination is made on the basis that you (contractor) work on an ad hoc basis depending on when you have chosen to book a shift and PELC has chosen to give you the shift requested. PELC have no obligation to offer you work and equally you do not have any obligation to book work with PELC. You will book the shifts you want to work on the available booking portal.**
>
> **6 Working arrangements -This determination is made on the basis that the place of work for any shift agreed will be determined by the location set out on Rota Master.**

> **When liaising with stakeholders during work with PELC it is expected that the contractor sent by the services supplier will introduce themselves as an independent contractor working on behalf of PELC this is to ensure that there is no ambiguity about the contractor's connection to PELC."**
>
> **Financial risk is set out at 7;**
>
> **"8 Equipment - Although you the supplier will provide some of your own equipment (including for any substitutes) it is understood that PELC may provide other equipment required for the services you will provide to PELC as this is critical to ensure patient safety.**
>
> **9 Business in your own right -You the contractor will not be included on PELC structure chart or have any management responsibility with PELC this must remain the case for the duration of this contract. You may be given PELC NHS mail access due to the sensitivity of information sharing regarding the patient cases that you may have seen.**
>
> **10 E-mails sent on behalf of PELC must clearly stipulate in the signatures that the Contractor is an 'independent contractor working on behalf of PELC'. PELC expect that the contractor will continue to function as a business. You (the supplier or contractor) will not be covered under PELC business or any other insurance." The next steps includes issuing new terms of engagement applicable from the 5th of April 2021 and "ensure that you were working in line with the new contract".**
>
> **27. Ms Gangapatnam told me that before the IR35 assessment the Claimant was paid through Rota Master but since the IR 35 assessment she put her shifts on her invoices, she was paid gross and is responsible for paying her own tax and national insurance. This was not disputed by the Claimant."**

13. The tribunal referred to evidence that the claimant had an NHS email address. Ms Gangapatnam said she believed that was because she had previously been employed by the NHS. An email showed that Clinical Streamers had been offered fleeces in cold weather. The respondent said that there was no requirement to wear them. Mr Rubery accepted that since the pandemic all self-employed and employed staff had been provided with scrubs; and the claimant was also given other equipment necessary to carry out her role. The tribunal also referred to Mr Rubery's evidence that the job description for all Clinical Streamers was the same, whether they were employed or self-employed, and to aspects of that job description and the person specification. The respondent's evidence was that the claimant did not appear in its organisational chart and had been told to make clear in any email footer that she was not an employee, although no such example was produced.

14. The tribunal continued:

> **"33. There was no evidence that as far as the patients (or clients) of the Respondent's service were concerned there was anything to suggest that she was other than an integrated part of the Respondent's service.**
>
> **34. I am satisfied that due to the nature of the Claimant's role there was a significant degree of integration into the Respondent's service."**

15. Mr Rubery's evidence was that the claimant had no set agreed working hours. Rotas for all shifts were circulated two months in advance to all Clinical Streamers, who could indicate availability and preferences. Shifts were then allocated: first to employed staff having regard to their contractual hours, then to bank staff and lastly to self-employed contractors. The tribunal continued:

> **"36. The Claimant tended to apply for shifts at the two locations which were most conveniently located for her in terms of travel and he understood that she was allocated some shifts most months that she requested them. He did not believe that the Claimant had ever sent a substitute to work any shift, pointing to the fact that she would only have applied for shifts that she was available for and wished to work.**
>
> **37. I find that the relevant professional registration and qualification required was personal to the Claimant, as were the background checks albeit it was the Respondent's position that a similarly suitably qualified substitute would have been accepted in reality the Claimant did not ever send a substitute and it would have been impracticable for her to have done so."**

16. The tribunal considered that a reference by the claimant in an email, to being "accountable for my actions/omissions", was not indicative of her recognising that she was self-employed, but a reference to her professional obligations under the NMC code.

17. At [39] the tribunal referred to invoices in the bundle from MacleanJ Limited to the respondent for various shifts at two locations. It said that it was accepted that she worked "regularly" for the respondent over four and a half years "and, in that time, she did not work for anyone else."

18. The tribunal set out the definitions of "employee" and "worker" contained in section 230 of the **1996 Act** and of "worker" contained in the **1998 Regulations**. It noted that the claimant did not rely on the extended definition of "worker" in section 43K of the **1996 Act**.

19. The tribunal summarised the claimant's submission, in particular that she had never provided a substitute and that references in the documents to the ability to do so did not reflect the practical

reality. It noted various features to which she pointed as showing that she was fully integrated into the respondent's organisation. The tribunal continued [42]:

> **"While the Claimant disputes that the Members Agreement reflected the reality of the relationship, she submitted that even based on its contents it was clear that the contract was between herself personally and PELC and not with her company and that the arrangement with her company was limited to payment only and was suggested by PELC."**

20. The tribunal then referred to a number of legal authorities and the points that it drew from them. It also observed that since April 2021 the IR35 regime placed responsibility on medium and large private sector employers for establishing if their contractors were employed or self-employed for tax purposes. The tribunal observed at [49] that the "IR35 binary classification of workers into employed and self-employed is not the same as the categorisation(s) in employment law."

21. The tribunal then set out its conclusions, based on its findings of fact. It began as follows:

> **"55. The first issue I had to resolve was whether there was a contract between the Claimant and the Respondent at all, or whether the contract was with the service company Maclean J Ltd. I have found that there was a contract between the Claimant and the Respondent [see above].**
>
> **56. I am satisfied that the documentation before me put forward as reflecting the contractual relationship, principally the Members Agreement, did not accurately set out the terms of the relationship between PELC and the Claimant which I find instead had to be determined from the reality of the working relationship.**
>
> **57. Some factors pointed away from employment status. The Claimant submitted monthly invoices from her company and was not paid within the PAYE system. She was able to log on to the Respondent's system and select shifts at one of four defined clinics, but in this respect, she was in the same position as the Respondent's bank employees (albeit they were allocated shifts first). She was described in correspondence as a self-employed contractor and the Claimant agreed to submit the IR 35 status determination indicating that she could provide a substitute and provided her own professional indemnity insurance.**
>
> **58. I am satisfied that on the evidence before me substitution would have been impracticable and references to substitution in the IR 35 status determination and associated documentation were not operative. No substitution was ever requested by the Claimant or the Respondent, the nature of the job itself included knowledge of the Respondent's operation and the requirement for stringent background checks and qualification checks meant that the conditional nature of the substitution clause was such that there was no realistic prospect of substitution taking place. This, at least, is consistent with the wording of the Members Agreement.**
>
> **59. Other factors pointing towards employment status included personal service. The agreement to accept payment to MacleanJ Ltd was expressly stated to be in discharge of any liability to make payment to the Claimant in relation to the service provided by her personally. The Members Agreement sets out at Clause 1 the personal nature of the agreement between the member i.e. the doctor or in this case the nurse and the Respondent. Clause 1 .2 specifies that the member must hold the relevant professional registration and 1.3 prohibits delegation,**

> **while 1.4 sets out that it is the Member who is agreeing to provide the services personally.**
>
> **60. However, clause 4 provides that the member is invited to bid to provide services and does so on a self-employed basis; clause 4.4 states that here is no mutual obligation to provide or accept work. Clause 14 describes the status of the Member and expressly provides that they are self-employed and not a worker or employee.**
>
> **61. I find that the emails from the Respondent to the Claimant were directed to her personally and not to her company, explicitly stating, "you are the person to be engaged". The qualifications and background checks required were personal to her as an individual. In relation to CQC matters she was treated as if she was a staff member.**
>
> **62. I find there was a contract in place which required as its dominant purpose the Claimant to personally do work. It was not disputed that the relevant professional registration and qualification was personal to the Claimant. I do not find that it would reflect the reality of the arrangement to describe PELC as a client of the Claimant's. I am satisfied that she could not be said to be an independent provider of services who was not in a relationship of subordination with the Respondent.**
>
> **63. I find that the Claimant was a worker under limb b) of section 230 of the ERA each time she accepted work at one of the Respondent's UTC's."**

22. The tribunal went on to consider whether the claimant was an employee. It noted that it had already found in her favour in respect of personal service. It found that there was sufficient control to make the relationship one of employer and employee. It continued:

> **"66. The Respondent also points to a lack of the irreducible minimum of obligation to provide and do work. The Claimant worked regularly for the Respondent for a number of years I am satisfied that the natural inference from the facts is that the Claimant agreed to undertake at least some reasonable amount of work for the Respondent and the Respondent agreed to offer at least some reasonable amount of work and pay for that work. There was at least an element of mutual obligation.**
>
> **67. Having taken into account the factors consistent and inconsistent with employment I find as a matter of overall assessment that an employment relationship existed. I find that the Claimant was an employee within the meaning of s 230 (1) of the Employment Rights Act 1996."**

The Law

23. Section 230 **Employment Rights Act 1996** includes the following relevant provisions;

> **"(2) In this 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."**

24. The definition of "worker" in regulation 2 **Working Time Regulations 1998** is the same.

25. Both definitions refer to a contract. If the party to whom the services are provided contracts, not with the individual who performs them, but with a third party such as a limited company, then the individual cannot be the worker or the employee of that party. If that party does contract with the individual, then that may be a contract of employment; or a worker contract, but not an employment contract; or neither, according to whether the other elements of either definition are fulfilled.

26. As to whether such a contract is a contract of employment, the general starting point is the guidance in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 QB 497 at 515C-D:

> **"A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service."**

27. That passage identifies the need for the putative employee to be under an obligation to provide the services personally. That is also an express element of the statutory definition of worker. The personal-service test is the same, whether for the purposes of employment or worker status. See **Ter-Berg v Simply Smile Manor House Limited** [2023] EAT 2 at [75]. In that case I considered recent authorities pertaining to the requirement of personal service in the following passage:

> **"76. In Pimlico Plumbers Ltd v Smith [2017] ICR 657 in the Court of Appeal, after reviewing various authorities, Sir Terence Etherton MR said at [84]:**
>
> > **"Some of those cases are decisions of the Court of Appeal, which are binding on us. Some of them are decisions of the EAT, which are not. In the light of the cases and the language and objects of the relevant legislation, I would summarise as follows the applicable principles as to the requirement for personal performance. Firstly, an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally. Secondly, a conditional right to substitute another person may or may not be inconsistent with personal performance**

> **depending upon the conditionality. It will depend on the precise contractual arrangements and, in particular, the nature and degree of any fetter on a right of substitution or, using different language, the extent to which the right of substitution is limited or occasional. Thirdly, by way of example, a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance. Fourthly, again by way of example, a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance. Fifthly, again by way of example, a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance."**

77. In the Supreme Court Lord Wilson JSC, with whom the other members of the court agreed, reached the conclusion that Mr Smith's only right of substitution was of another Pimlico operative, so that the question was then whether that right was inconsistent with the obligation of personal performance. After considering other authorities he concluded at the end of [32]:

> **"The sole test is of course the obligation of personal performance; any other so-called sole test would be an inappropriate usurpation of the sole test. But there are cases, of which the present case is one, in which it is helpful to assess the significance of Mr Smith's right to substitute another Pimlico operative by reference to whether the dominant feature of the contract remained personal performance on his part."**

78. In Stuart Delivery Ltd v Augustine [2022] ICR 511 it was stressed that [84] of the Court of Appeal's decision in Pimlico does not set out rigid categories or rules of law. It only sets out two principles: that an unfettered right of substitution is inconsistent with an obligation of personal service, and that a conditional right may or may not be, depending on the nature or degree of the fetter So it is therefore unhelpful to try to shoehorn the given case into one of these supposed categories."

28. As to mutuality of obligation, in **Ter-Berg v Malde** [2025] EAT 23 at [21] I said this:

> **"21. The concept of mutuality, or an irreducible minimum, of obligation, is a usage which dates back at least to the speech of Stephenson LJ in Nethermere (St. Neots) Limited v Gardiner [1984] ICR 612, at 623C- F. As subsequent authorities have discussed, it may be used refer to the fact that (whether for employee or worker status) there must, at the relevant time, be a contract, in which both parties have undertaken legally binding obligations to the other, and/or to the fact that those obligations must be of a kind which fulfils the essential elements of a contract of that type. Such issues may arise, in particular, in cases where the nature of the relationship is that it involves intermittent discrete assignments, and where issues arise about the position (as to the existence and/or the content of a contract) both during and between assignments (see e.g. Stringfellow Restaurants Ltd v Quashie [2012] EWCA Civ 1735; [2013] IRLR 99 at [10] – [14])."**

29. After referring to the foregoing passage in **Ready Mixed Concrete**, I continued:

> **"23. In Nethermere Stephenson LJ referred to what MacKenna J went on to say about (i) at 515DE, which I will cite a little more fully:**
>
> > **"As to (i). There must be a wage or other remuneration. Otherwise there will be no consideration, and without consideration no contract of any kind. The servant must be obliged to provide his own work and skill. Freedom to do a job either by one's own hands or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be: see Atiyah's Vicarious Liability in the Law of Torts (1967) pp. 59 to 61 and the cases cited by him."**

> **24. In Nethermere Stephenson LJ then observed:**
>
> > **"There must, in my judgment, be an irreducible minimum of obligation on each side to create a contract of service. I doubt if it can be reduced to any lower than in the sentences I have just quoted …"**

30. In oral submissions Mr Watson suggested that **Nursing and Midwifery Council v Somerville** [2022] EWCA Civ 229; [2022] ICR 755 indicates that mutuality of obligation is not an ingredient of worker status. In **Malde** at [37] – [38] I explained that this is a misreading of a passage in the speech of Lewis LJ in **Somerville**, which does not lay down any such principle.

31. In **Autoclenz Limited v Belcher** [2011] ICR 1157; [2011] UKSC 41, Lord Clarke JSC, with whom the other justices agreed, referred to certain contract-law principles which apply to ordinary contracts, such as commercial contracts. These principles are what lawyers call the parole evidence rule and the signature rule and the principle that the only basis on which it might be alleged that the terms of a written contract do not accurately reflect the true agreement of the parties is if there has been a mistake which requires rectification or it is a sham in the strict common law sense. In the sphere of work, a different approach should be taken. The court or tribunal should consider what was actually agreed "…either as set out in the written terms or, if it is alleged those terms are not accurate, what is proved to be their actual agreement at the time the contract was concluded."

32. In **Uber BV v Aslam** [2021] UKSC 5; [2021] ICR 657 Lord Leggatt JSC, for the whole court, expounded on the "theoretical justification" for that approach. I considered aspects of the judgments in **Autoclenz** and **Uber** in some detail in **Ter-Berg v Simply Smile Manor House Limited** [2023] EAT 2 beginning at [29]. For present purposes it suffices to set out the following passage.

> **"40. It seems to me, reading [68] to [76] as a whole, that the decision in Uber does not displace or materially modify the Autoclenz approach itself, which it cites extensively and adopts. What is said at [76] should not be read as intended to reformulate, in substance, the approach which Autoclenz enjoins tribunals to take. Rather, it forms part of the conclusion of Lord Leggatt's developed account of the theoretical underpinning for that approach, which he says should also accordingly inform the tribunal's assessment of the realities of a given case when it carries out the Autoclenz exercise, in its consideration of whether the enjoyment of employment protection rights may be otherwise at risk of being denied to someone who Parliament**

> **intended should benefit from them.**
>
> **41. The reference at [76] to it being wrong to treat the terms of the written contract as the starting point is not, to my reading, intended to signify that the written terms are in every case necessarily irrelevant or could not conceivably ever accurately convey the true agreement of the parties. Rather, what this means, as fully stated in the course of [76] and [77] as a whole, is that in a case where what was the true intention of the parties in reality is a live issue, it is necessary to consider all the circumstances of the case which may cast light on whether those terms do truly reflect their agreement, and to do so applying the broad doctrinal approach which Autoclenz describes, rather than the stricter approach that conventional contractual principles would normally allow. It would therefore be wrong in such a case for the tribunal simply to regard those written terms as conclusive, and thereby fail to conduct that exercise at all. But it would also be wrong for the tribunal to regard the written terms as having a primacy in the sense of exerting a constraint on what the tribunal may find as a result of that exercise were in fact the terms that the parties truly intended to agree.**
>
> **42. This reading is, to my mind, confirmed by a consideration of what Lord Leggatt goes on to say at [85] when considering "whole agreement" terms, and the insights offered by Carmichael v National Power plc [1999] ICR 1226. Lord Leggatt says explicitly: "This does not mean that the terms of any written agreement should be ignored." He sets out that the conduct of the parties and other evidence may show that those terms were in fact understood and agreed to be a record, possibly an exclusive record, of their true agreement. But he adds that there is "no legal presumption" that a written document contains the whole agreement and "no absolute rule" that it represents the true agreement, just because it has been signed. As he goes on to note, that approach is consistent with that of the CJEU, being that the wording of contractual documents is relevant, but not conclusive.**
>
> **43. Uber does not therefore mean that written terms to which the parties have ostensibly signed up should generally now be disregarded. It does not signify that we have reached a point in the development of the law where the question of whether someone is a worker or an employee has become purely one of status with no role at all for contract. Mr McNerney confirmed in the course of argument that he did not so contend, and nor do I think that Lord Leggatt intended to go that far."**

The Grounds of Appeal, Discussion, Conclusions

33. As before the tribunal, the claimant appeared in person and Mr Watson appeared for the respondent. There are four numbered grounds of appeal. Ground four contends that the tribunal's reasons were insufficient in respect of the aspects raised by grounds one, two and three; so I will consider that alternative challenge when considering each of the substantive grounds.

Ground 1

34. Ground one contends that the tribunal erred in holding, at [20], that the respondent contracted with the claimant, rather than with her limited company. The ground contends that the tribunal erred in law or reached a perverse conclusion.

35. The ground contends that the tribunal relied upon two documents: the Members Agreement (MA) and the payment authorisation declaration (PAD). As for the MA, there was an unexplained contradiction between the reliance upon it at [20] and the finding at [56] that it did not accurately set out the terms of the parties' relationship. As for the PAD, the ground accepts that its wording might support the tribunal's conclusion on this issue, but contends that it failed to take into account other "highly relevant evidence of the parties' intentions". That is, in summary: the evidence of the respondent's witnesses that it contracted with the claimant's company; the invoices referred to at [57], which were expressed to be *from* the company; the claimant's IR35 questionnaire answers referred to at [24] stating that she provided her services through a limited company; and the respondent's IR35 assessment at [26] the premise of which was that it contracted with the company. Reliance is also placed on the fact that the claimant gave no evidence of her intention or understanding at the time.

36. My conclusions in relation to this ground are as follows.

37. First, I do not consider that the tribunal made contradictory findings about the MA. The tribunal was not bound to conclude that the document was either in its entirety an accurate reflection of what had been agreed or, in its entirety, not. It was open to it to conclude that some of its provisions were, and some not. The tribunal also had to consider, first, whether the respondent contracted with the claimant at all, as opposed to her company. Having found that it contracted with the claimant, it then had to consider whether that contract was one of employment, a worker contract, or neither. It was entitled to consider, separately, what light the provisions of the MA cast on each of those issues.

38. It is clear from [20] that the tribunal considered that the reference to the MA in the PAD, together with aspects of the contents of the MA, supported the conclusion that the respondent contracted with the claimant, and not with her company. That did not preclude it from considering, when it turned to the nature of the contract between the claimant and the respondent, to what extent various terms of the MA truly reflected the reality of what those parties had agreed about matters

relevant to that, applying the principles set out in **Autoclenz** and **Uber**. It was the position in relation to the specific terms and nature of the relationship between the claimant and the respondent that the tribunal identified it was considering at [56], when it referred there to the relationship "between PELC and the Claimant". That was not the same issue as the one that it had been considering at [20].

39. Mr Watson submitted that at [56] the tribunal had purported to conclude that the MA *as a whole* did not accurately reflect the nature of the relationship – not that some provisions did not do so. I can see that, in isolation, the words used in [56] could be read that way; but I do not think that is the right reading of that paragraph in the context of the whole of the decision. In particular, further references to aspects of the MA at [58], [59] and [60] convey that the tribunal did consider *some* of its provisions to be an accurate representation of what the claimant and the respondent had agreed.

40. The overall sense, reading these passages as a whole, is that the tribunal did not assume that the MA was necessarily in all respects a reliable or complete guide to the true agreement between the parties, on every aspect. So it looked to the wider overall evidence as well, in relation to different aspects, sometimes concluding that the reality of what was agreed was different from what was stated in the MA, but sometimes that the pertinent provision of the MA did accurately reflect the reality.

41. As to the second limb of this ground, the claimant submitted that the tribunal *did* consider all relevant evidence and what it made of it. It considered the invoices at [57], the claimant's IR35 questionnaire at [24], the respondent's IR35 document at [26] and the evidence of Mr Rubery and Ms Gangapatnam in various passages. She referred also to its comments at [49] on the IR35 classification not being the same as the categorisations in employment law, to its conclusion at [58] that substitution would have been impracticable and that references to substitution in the IR35 status determination and other documents were "not operative", and to its observation, when discussing the authorities, at [52], that tribunals should be alert to the use of the label "independent contractor" as a device by which a potential employer seeks to avoid the legal consequences of an employment relationship.

She also submitted that the absence of express refence to her subjective intentions was immaterial, as employment status was an objective question. She also submitted that the tribunal was entitled to give decisive weight to the PAD in support of the conclusion that the respondent contracted with her, and that payment to the limited company was merely a "discharge mechanism".

42. In considering this strand of the argument I keep in mind that the overall evaluation of the factual matrix was a matter for the tribunal, and that it was not necessarily obliged to refer in its conclusion to every feature that it took into account. However, it is also well-established that failure to take into account a relevant consideration is an error; and that a failure to address a significant factor or argument relied upon by a party may mean that the tribunal's reasons are inadequate.

43. The tribunal was certainly entitled to treat the PAD as a significant document when considering who the respondent contracted with. It addressed the role of the company. It was, on its face, a declaration by the claimant – "I" – signed by her, as herself (rather than identifying that she was doing so on behalf of the company). It referred to "sums due to me", it stated that payment to the company "will discharge any liability owed by PELC to me" and it referred to the MA as being an agreement strictly between the respondent "and myself as an individual NURSE member of the Society." Taken at face value, the sense of this document was that the obligation of the respondent was to pay the claimant, but that that obligation would be discharged by making payment to her company. It was drawn up on the respondent's headed notepaper, and was relied upon by it.

44. The tribunal also properly considered the terms of the MA, to which the PAD expressly referred. That document on its face purported to be an agreement between the respondent and an individual clinician. It did not refer to the possibility of a limited company. At [1.3] it provided that only members of the respondent (which, as I have noted, is an Industrial and Provident Society) could provide clinical services to it, and that the obligations of the member could not be delegated.

45. The tribunal fully set out the salient contents of the various IR35 documentation. As it noted, there was a change in the legal regime in April 2021, shifting the responsibility in respect of any incorrect categorisation from the individual or their company to the party receiving the services. The completion of the various documentation referred to in the decision coincided with that change. What the tribunal wrote at [27] is somewhat compressed, but it was agreed before me that what it correctly captured was that, prior to the change in the IR35 regime in April 2021, no invoices were submitted, and the respondent simply worked out how much to pay each month from its records in its "Rota Master" system. But from April 2021 invoices were required, and were produced.

46. The tribunal plainly considered the contents of the IR35 documentation, noting the affirmative answer given by the claimant in the first document referred to at [24], to the question whether she provided her services through a limited company, partnership or unincorporated association, and her having signed a second document provided by the respondent, referring to the expectation that she or her company would provide a substitute if she could not complete agreed work. It also noted there that in the first document she had answered "yes" to whether she had ever sent, and paid, for a substitute, but also, at [25], that the respondent had completed a document stating that this had not happened – and the latter was certainly consistent with the evidence of the respondent's two witnesses on that question, to which it referred at the end of [17]. It is clear from [58] that the tribunal did not regard the IR35 documentation as necessarily accurate or reliable in all respects. It was entitled to take that view. It is clear also that it did not overlook the fact that the invoices, of which it had a number of copies in its bundle, were "from her company", which it noted at [57].

47. The passages in the witness statement of Mr Rubery relied upon in this ground are assertive. The passage in the witness statement of Ms Gangapatnam is to the effect that the claimant, having completed an application form, "subsequently confirmed" that she would be providing services "through her personal service company". It appears, as she gave page numbers, that she was referring

to some documents in the tribunal's bundle, but I do not have copies, or know what they said.

48. It would, I think, have been better if the tribunal, rather than setting out its conclusion on the question of the contracting parties at [20] and then referring to it again in the section devoted to conclusions, at [55], had simply set it out in the latter section. But, I consider, reading the decision as a whole, that it cannot have failed to take into account the evidence of the IR35 paperwork and the invoices, nor the fact that the respondent's witnesses maintained that the contract was with the company, when deciding this issue; and that the first appearance of this conclusion at [20], following the discussion of the contents of the PAD and the MA, is reflective of the fact that the tribunal considered those documents to be decisive and determinative of that issue. It was entitled to do so.

49. For all of those reasons ground 1, and the correlative strand of ground 4, fail.

Ground 2

50. This ground contends that the tribunal erred in finding that there was mutuality of obligations such as to establish employment. Specifically, it challenges the conclusion, at [66], that "the natural inference from the facts" is that the claimant "agreed to undertake at least some reasonable amount of work" and the respondent "agreed to offer at least some reasonable amount of work and pay for that work". That conclusion is said to be perverse and/or (by ground 4), insufficiently explained.

51. Reliance is placed, in summary, on: the fact that Mr Rubery's evidence was that the claimant had no set hours and the respondent was not obliged to offer her work, nor she to accept it; the findings as to the mechanism for applying for, and allocating, shifts; and that the claimant was allocated shifts "most" months that she requested them (so, by implication, not all months); the absence of any documentary or witness evidence expressly supporting the "reasonable obligations" found; and the invoices in the tribunal's bundle, for April 2022 to April 2023, which show that, while the claimant worked each month in that period, she did not work a regular shift pattern.

52. As to [39] it is said that, in the absence of witness evidence from the claimant, the tribunal could not properly find that she had not worked for anyone else at all over the course of the relationship; and the finding that she worked regularly for the respondent during that period, was not, given the other features of the evidence, sufficient to support the conclusion that there was the necessary mutuality of obligation.

53. My conclusions on this ground follow.

54. First, it is clear that the tribunal found that (a) there was an overarching or umbrella contract between the claimant and the respondent; (b) the express terms of that contract did not guarantee that the claimant would be offered any particular shifts, nor oblige her to accept any shifts offered; (c) she could bid for whatever shifts she wanted each month; (d) she was not guaranteed to get all the shifts she bid for, and available shifts were allocated to her category of providers last in order. It is also clearly implicit in the tribunal's findings that, once the claimant had been allocated some or all of the shifts that she had bid for, she was committed to working those shifts (or, taking the respondent's case at its highest, providing a substitute), and the respondent was committed to providing, or making payment in respect of, those shifts.

55. I was told that the argument before the tribunal was entirely about whether there was the necessary mutuality of obligation throughout the period of the 4 ½ year relationship; the possibility that the claimant might have been a worker or an employee only during the period of each allocated shift was not canvassed. The tribunal does not say, in terms, at [67], that its finding is that the claimant was an employee *throughout* the period of the relationship; but nor does it say that she was only an employee during the course of each shift worked. Given also that this follows on from what it said at [66], I am inclined to agree with Mr Watson and the claimant, that the former was what it meant.

56. However, there are two difficulties with that conclusion. First, in so far as it is explained, at

[66], it appears to have been based on the conclusion that the claimant "worked regularly" for the respondent, for a number of years (which was, as such, a fair summary of the facts found).

57. In **Pimlico Plumbers** at [145] Underhill LJ, observed: "If the position were that in practice the putative employee/worker was regularly offered and regularly accepted work from the same employer, so that he or she worked pretty well continuously, that might weigh in favour of a conclusion that while working he or she had (at least) worker status, even if the contract clearly (and genuinely) provided that there was no legal obligation either way in between the periods of work." But here the tribunal appears to have found that, notwithstanding what the express provisions of the documentation stated, there was mutuality of obligation of such a kind as to make the claimant an employee *throughout* the period of the relationship.

58. In **Airfix Footwear Ltd v Cope** [1978] ICR 1210 Mrs Cope assembled shoe parts, normally working from home. The respondent was not obliged to send her work and she was not obliged to take it. She did this work for the respondent for seven years, generally working five days a week. The tribunal found that the effect of the continuing relationship was, in practice, to prevent her carrying on a business on her own account, and that she was not highly skilled or pre-qualified and had no skill to offer in the open market. Its conclusion, on these facts, that she was an employee throughout the period of the relationship, was upheld by the EAT; but it stressed that these matters must depend on the facts of each particular case.

59. In **Nethermere (St Neots) Ltd v Gardner** (above) Stephenson LJ read the relevant passage in **Airfix Footwear** as "rejecting the company's argument that there were no reciprocal obligations." The applicants were home-based pieceworkers sewing flaps and pockets on to boys' trousers. Stephenson LJ considered that, to support a continuing contract, there must be evidence, at least of an obligation to accept work offered by the company, from which might then be implied an obligation to offer it. The evidence was "tenuous" but, upon a close review, enough. He concluded (at [1984]

ICR 626H-627A): "I cannot see why well-founded expectations of continuing homework should be not be hardened or refined into enforceable contracts by regular giving and taking of work over periods of a year of more". Dillon LJ (at 635B-C) identified particular features of the evidence from which respective obligations to take a reasonable amount of work, and to provide a reasonable share of the work to each outworker, could be inferred. That enabled them both (by a majority – Kerr LJ dissented) to uphold the tribunal's finding that both applicants were employees.

60. In the present case, given the express findings about what the documentation said on this subject, and, in particular, about how the monthly bidding and allocation system worked, and that the claimant is a qualified nurse, I consider that the tribunal's further finding that she worked regularly for the respondent for a number of years was not, by itself, sufficient to explain or support its conclusion that the "natural inference" was that she agreed to undertake at least a reasonable amount of work and the respondent agreed to offer, and pay for, at least a reasonable amount of work. This was not a case where there was any suggestion, or finding, that, for example, at some point something had been said by the respondent to the effect that the claimant could be assured of getting a certain amount of monthly work, or by the claimant to the effect that she committed to do a certain minimum each month. If the tribunal considered that there was nevertheless some further factual feature that supported the inference that it said it drew, it needed, at least, to identify what it was.

61. There is also a second problem. This is that at [63] the tribunal found, in terms, that the claimant was a limb (b) worker "each time she accepted work" at one of the respondent's UTCs. That appears to be a conclusion that she was a worker during the period of each shift that she was offered and accepted, but, implicitly, only during each shift. It is, at least, not wholly clear. If the tribunal did mean to say that the claimant was only a worker each time she accepted work, then that would appear to preclude the conclusion that she was an employee throughout. If the latter is indeed what the tribunal meant at [66] and [67] then that conflicts with what it appeared to conclude at [63].

62. I note that the judgment simply states that the claimant "was an employee" and "falls within the meaning of worker"; and I note again that I was told that all of the argument focussed on the question of what her status was throughout the relationship. Nevertheless, the express wording of the conclusion at [63] means that an element of uncertainty remains.

63. For these reasons ground 2 (and the correlative part of ground 4) succeed.

Ground 3

64. This ground challenges the tribunal's conclusion at [58] that substitution would have been "impracticable", and that references to it in the IR35 determination and associated documentation "were not operative", so that the obligation of personal service was not thereby negated.

65. First, it is contended that the finding that the claimant never did send a substitute was perverse, given that she had filled out the IR35 form at [24] stating that she *had* sent a substitute, and that Mr Rubery and Ms Gangapatnam's evidence was only that neither was *aware* of her ever having done so. However, the tribunal also referred at [25] to the respondent having completed an IR35 form in April 2021 stating that sending a substitute "had not happened". In light of that, I think this particular way of putting the challenge falls short of the high perversity threshold. In any event, as the authorities discuss, the fact that an ostensible right of substitution has not been used does not *necessarily* mean that the tribunal must conclude that it does not genuinely reflect what the parties intended (though it could be regarded as relevant to that question).

66. However, the present tribunal *also* concluded that in this case the clause was "impracticable", because anyone performing this role would need to have knowledge of the respondent's operation, and because of the need for stringent background and qualification checks. The claimant also referred me to regulations (**SI 2014/2936** reg. 19) which she said mean that the responsibility for ensuring that a person had the requisite qualifications, skills and experience fell on the respondent and was non-

delegable. The proposition that the respondent could leave it to the claimant to vet any substitute was therefore not tenable. Mr Watson responded that this argument was not run before the tribunal, and I could not be sure what the respondent's witnesses might have said in response to it.

67. In any event, Mr Watson contended that what the tribunal failed to consider, was the possibility that if, for example, having been booked to do a particular shift, the claimant then found herself in difficulties, there was a ready pool of other nurses already accredited by the respondent as regular employees, bank staff or self-employed contractors, as a source of potential substitutes. For this reason, he submitted, the conclusion that the right of substitution was "impracticable" was either untenable, or insufficiently explained. Further, a right which was only conditional on the substitute being appropriately trained or qualified, would fall into the fourth category envisaged by Sir Terence Etherton MR in **Pimlico Plumbers**, and so be incompatible with an obligation of personal service.

68. I consider that the tribunal's reasoning on this issue is, at least, inadequate. At the start of [37] it found that the professional registration and background checks required were "personal to the claimant". But the tribunal's answer there to the respondent's position that "a similarly qualified substitute" would have been accepted, was that in reality the claimant did not ever send one, and that it would have been impracticable to do so. The latter finding appears to have been the crucial one, because it is *that* finding that (implicitly) supported the conclusion that the ostensible right of substitution was not a true reflection of what the parties expected, because it was in reality incapable of being effective. That conclusion – of impracticability – at least required some further explanation. The challenge to this aspect of the tribunal's decision therefore also succeeds.

Outcome

69. As I have dismissed ground 1 the tribunal's finding that the respondent's contract was with the claimant herself, and not with her limited company, stands.

70. However, as I have upheld the challenges to the conclusions on the requirement for personal service and on mutuality of obligation, the tribunal's conclusions that the claimant was a worker and an employee must both be quashed. I will give directions upon handing down this decision to enable the parties to make submissions as to the terms of the further order I should make consequential upon this outcome.