

Case No: 2411388/2023
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EMPLOYMENT TRIBUNALS

Claimant: Y Barron (1)

P Hood (2)

J E Nixon (3)

R A Taylor (4)

S M Taylor (5)

Respondent: ABC Taxis Chester Limited (1)

ABC Taxis (NW) Limited (2)

Craig Dewhurst (3)

Michael Nicholls (4)

HELD AT: Liverpool

ON: 20 & 21 March and 28
& 29 May 2025 (29
May and 29 July in
chambers)

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: Mrs H Hughes (non-professional representative)

Respondent: Mr J Chiffers (counsel)

JUDGMENT

The judgment of the Tribunal is that:

First and second claimants

- (1) The first claimant was not an employee with any of the respondents at the material time in accordance with the definition provided by section 230 Employment Rights Act 1996.
- (2) The first claimant was a worker with the second respondent 'ABC Taxis NW Limited' from 2 May 2022 in accordance with section 230 Employment Rights Act 1996.
- (3) The second claimant was not an employee with any of the respondents at the material time in accordance with the definition provided by section 230 Employment Rights Act 1996.
- (4) The second claimant was a worker with the second respondent 'ABC Taxis NW Limited' from 2 May 2022 in accordance with section 230 Employment Rights Act 1996.

Third, Fourth and Fifth claimants

- (5) The third claimant was not an employee nor was he a worker with any of the respondents within the meanings provided by section 230 Employment Rights Act 1996. This is because the third claimant was self employed at the material time.
- (6) The fourth claimant was not an employee nor was she a worker with any of the respondents within the meanings provided by section 230 Employment Rights Act 1996. This is because the fourth claimant was self employed at the material time.
- (7) The fifth claimant was not an employee nor was he a worker with any of the respondents within the meanings provided by section 230 Employment Rights Act 1996. This is because the fifth claimant was self employed at the material time.

Consequences of the judgment concerning employment status and employer identity

- (8) The claims involving the first and second claimants will now be discussed at a further preliminary hearing case management on date to be confirmed. At this hearing, those claims which permit complaints to be raised by those with worker status will be subject to a final list of issues, listing for a final hearing and the making of appropriate case management orders.

- (9) The first and second claimants' complaints of unfair dismissal and redundancy payment (Parts X and XI Employment Rights Act 1996), are dismissed because they can only be brought by employees and not workers.
- (10) The third, fourth and fifth claimants' claims are dismissed because they are not employees or workers, and the Tribunal does not therefore have jurisdiction to hear these claims as they were self employed at the material time.

REASONS

Introduction

1. These proceedings arose from claims brought by five claimants working during different periods for a taxi business established in July 2020 and operating primarily in the Chester area. A range of complaints have been brought within the Tribunal proceedings including unfair dismissal, breach of contract, holiday pay, redundancy payments and failure to provide a statement of particulars.
2. The first and second respondents have presented response forms and grounds of resistance which dispute those complaints being brought, and which argue that the claimants were engaged by the first respondent as independent sub-contractors.
3. The third and fourth respondents had been introduced to the proceedings at a later date, had presented responses out of time and attended the preliminary hearing having been cautioned that the role they can play in the proceedings will be limited subject to the discretion of the Judge hearing the case.
4. I allowed the third and fourth respondents' responses to be accepted out of time because they were directors of the first and second respondents and effectively had been included in the proceedings because of concerns regarding the first respondent being a dormant company, (see below).
5. I would also add that this case which involved 5 claimants and 4 respondents was one where I was confronted with an under prepared case. This has meant that I have had to spend far more time dealing with this case, than is proportionate for the issues under consideration. I appreciate that Mr Chiffers as counsel for the respondents did the best that he could to assist the Tribunal during the hearings, but I understood that his instructions were limited to short periods when the hearings were taking place and neither he nor a solicitor were on record throughout. While the Tribunals recognise that

unrepresented parties can conduct cases or they can be assisted by non legally qualified representatives, this was a case which would have really benefited from legal representation on both sides throughout the proceedings. I revisit this matter in more detail in the 'Evidence Used' section below.

The first and second claimant's claims

6. The claim form using case numbers 2411388/2023 and 2411389/2023 which was presented on 28 October 2023 identified Miss Barron as lead claimant and Ms Hood as second claimant. The claim was brought following a period of early conciliation with ACAS from 26 October to 27 October 2023. The named respondents were ABC Taxis (NW Limited and ABC Chester Limited), and their registered offices in Runcorn and Chester respectively were given as the addresses for service of the proceedings.
7. The claim identified Miss Barron as a dispatcher/manager and asserted that her employment began on 3 July 2020 and ended on 15 August 2023. She brought complaints of unfair dismissal, redundancy payment, notice pay, holiday pay, arrears of pay and other payments. Constructive unfair dismissal was specifically identified within the background detail section of the claim form in relation to both claimants and a variety of complaints including a failure to provide written particulars of employment and a failure to pay at National Minimum Wage levels.
8. The final straw which prompted her resignation was not specifically identified in the claim form but appeared to relate to a failure to pay the balance of pay owed and on 25 or 26 June 2023 discovering that Mr Nicholls had held a meeting without the first and second claimants but with taxi drivers present. It was argued that following this meeting, both claimants were removed from social media groups and calls and emails were not answered.
9. Ms Hood the second claimant, was identified as an operator and she had been brought into the business by Miss Barron some time after the business began.
10. The claim was accepted by the Tribunal and served upon the first and second respondents. A response on behalf of ABC Taxis NW Limited (second respondent and referred to as 'ABC NW'), was presented in reply. The grounds of resistance relied upon the argument that the company had never employed either claimant. It was asserted that ABC NW was a business dealing solely with the Runcorn area and with school contracts entered with the local authority, providing school transport to self employed taxi drivers. It was submitted that any employment relationship the claimants had was with ABC Taxis Chester Limited. It was conceded that there was a relationship between the two companies but that it only involved a shared director, whom according to Companies House, would appear to be Mr Dewhurst, (see findings of fact below).

11. ABC Taxis Chester Limited (first respondent and referred to as 'ABC Chester'), also provided a response which accepted that the first claimant worker with the company from 10 March 2022 to 25 June 2023 when she walked out of the business. ABC Chester treated this as her final day of work. It was submitted that her job description of operator/manager was correct but that she was described as in charge of how and when she worked and collected drivers' settle personally, (settle being payments to a taxi company where drivers access the company's operator services so drivers could be allocated customers). It was argued that Miss Barron would distribute the monies received between herself and other dispatchers and that ABC Chester could not determine her working hours.
12. Interestingly, the ABC Chester response discussed Miss Barron approaching Mr Nicholls (fourth respondent and director of ABC Chester), in July 2020 and she proposed setting up a taxi business. Her reasons were that she had contacts and customer details from her previous employment with Abbey Taxis and which had been taken over by KingKabs. Mr Nicholls was described as friends with the owners of ABC NW who let them use ABC NW's equipment and licence to start up the Chester business. It was also asserted that Mr Nixon (third claimant), was Miss Barron's partner and was taken on as a driver in return for receiving 100% of his fares without having to pay settle.
13. It was asserted that while Mr Dewhurst was willing to allow ABC Chester to operate informally during Covid, as the pandemic subsided, he insisted that the business operate under its own company structure. This resulted in ABC Taxis Chester Limited being established on 13 July 2021, but it was argued that Miss Barron did not want to be included as a company director because of issues arising from her receipt of benefits from the DWP. Mr Nicholls was therefore registered as a director, but also Mr Dewhurst was too, which was argued to be necessary for licensing purposes. It was also submitted that as both Miss Barron and Ms Hood were in receipt of benefits, it was not until the DWP required evidence of work up to 16 hours per week from March 2022, that they requested to be formally recorded on the pay roll of ABC Chester. The reason for Miss Barron's resignation was attributed to Mr Nicholls using the settle money collected by her to pay outgoings for the business and on 25 June 2023, she walked out because no money was readily available for her to take.

Third, Fourth and Fifth claimants

14. Mr Nixon and Mr and Mrs Taylor notified ACAS of a potential claim on 18 September 2023 and an early conciliation certificate was issued on 17 October 2023 in respect of both ABC NW and ABC Taxis Chester. However, curiously a second early conciliation certificate was issued in relation to ABC Chester dated 26 to 27 October 2023. A claim was then presented to the Tribunal on 28 October 2023. There was some confusion regarding the early

conciliation certificate numbers, but the claim was accepted by the Tribunal on behalf of all three claimants.

15. Their primary argument was that they were workers and not self employed taxi drivers, and their claim was linked to those brought by Miss Barron and Ms Hood. Complaints of holiday pay and other payments were identified, and their dates of employment described as follows:

- a) Mr Nixon (third claimant 2411390/23) was employed from 3 July 2020 until 28 June 2023;
- b) Mrs Taylor (fourth claimant 2411391/23), was employed from 18 October 2021 until 29 June 2023; and,
- c) Mr Taylor (fifth claimant 2411392/23) was employed from 12 November 2021 until 12 July 2023.

The claim form argued that as taxi drivers the claimants had to work personally. Mr Nixon argued that he worked from the date when the Chester business began and had been offered shares in it. Mrs Taylor was described as a night driver and Mr Taylor was a day driver. They accused the respondents of using emotional blackmail to persuade the drivers to work excessive hours, which '*...they felt emotionally obliged to complete*'. It was asserted that pay was paid late and that no pay slips nor written contracts of employment had been provided. Reference was made to grievances being commenced and that Mr Nicholls had a bad temper towards them.

16. On 19 December 2023, ABC Chester presented a response resisting the claim and asserting that none of the claimants were employed by the company, being self employed. The claimants were described as responsible for their accounting and tax and that Mr and Mrs Taylor were engaged through their business SRT Travel Limited. It went on to explain that the drivers received the full amount of their fare, operating in their own vehicles or hired from other taxi businesses, they had a right to refuse fares, were responsible for its payment and that settle would be paid to use ABC Chester's operator services. It was argued that the Taylors paid their settle into Ms Hood's bank account.

17. Also on 19 December 2023, ABC NW presented a response resisting the claim and asserting that none of the claimants were employed by this company. The background information explained that Mr Nixon had never engaged with ABC NW as an employee or on a self employed basis. It was accepted that Mr and Mrs Taylor while never being employed by ABC NW, had previously undertaken sub contracted school runs for them as SRT Travel Limited. It was also added that Mr and Mrs Taylor were wholly responsible for paying their tax and fully aware that they were self employed and as part of the sub contract, drivers could have arranged for a substitute.

18. Both responses were accepted by the Tribunal. I noted that each of the four responses for the two claim forms (two responses for each), were handwritten using the same handwriting and while making slightly different arguments in relation to ABC Chester and ABC NW, they raised the grounds of resistance in the same style. It was clearly prepared by a single author and reflected the relationship between all of the respondent companies.

Considering the claims together

19. Judge Howard considered the cases on 24 November 2023 and determined that the cases should be considered together as follows:
- a) Miss Y Barron (2411388/23)
 - b) Ms P Hood (2411389/23)
 - c) Mr J Nixon (2411390/23)
 - d) Mrs R A Taylor (2411391/23)
 - e) Mr S M Taylor (2411392/23)

This was agreed by Miss Barron on behalf of all the claimants.

Case management

20. The case was originally subject to case management before Judge Batten on 10 June 2024 and she listed the case for a preliminary hearing to consider employment status and the correct respondent 'employer'. Permission was also given for the third and fourth respondent individuals/directors to be added to the proceedings, (pp112-119).
21. Judge Batten's reasons for adding the third and fourth respondents (Mr Dewhurst and Mr Nicholls respectively), to the proceedings was that:
- '...the first respondent company was at all times a dormant company and as such could not hold a taxi operators licence; the 2 named individuals are registered as directors of the first respondent at Companies House; Mr Dewhurst is also a registered director of the second respondent; the 2 named individuals operated a business known as 'ABC Taxis' in Chester; the claimants had understood that they were working for 'ABC Taxis' at the material time and believed this to be the first respondent; As the first respondent was a dormant company, it is entirely possible that the claimants in fact worked for these individuals, or one of them, under a trading name; the individuals will otherwise know for whom the claimants worked, if not them.'*
22. Permission was given for the new respondents to present a response. Mr Dewhurst denied that any of the claimants were engaged as employees or workers by any of the four respondents. He repeated the assertion previously made in relation to the first and second claimant's claim that the first respondent is a taxi company operating out of Chester and the second

respondent is a *'taxi company operating out of Runcorn that also carries school runs'*. The same arguments were used to describe the third, fourth and fifth claimants as not being employed and that any contract work for school runs operated by the second respondent involves payment to the driver with a deduction for settle taken by the company. The first claimant was described as a managing director and a dispatcher.

23. It was disputed that she was ever an employee or worker, with a profit share existing between her and the fourth respondent. The second claimant was described as a dispatcher, who was not an employer or worker and recruited by the first claimant without authority from the third or fourth respondents and on the understanding that she was paid a percentage of business profits. It was asserted that later they discovered she had been promised shares by Miss Barron. The same arguments were advanced concerning the third, fourth and fifth respondents and this was hardly surprising given the connection between the third and fourth respondents with the first and second respondent companies.
24. Mr Nicholls presented the same arguments in his response resisting the claim.
25. On 15 August 2024, Judge Leach determined that the third and fourth respondents had presented their responses out of time and could only participate in the proceedings as allowed by the Tribunal.
26. The case then proceeded to a Preliminary Hearing to consider the same issues as those before me, but on an earlier date before Judge Barker on 30 August 2024. However, due to an error in the Notice of Hearing the respondent witnesses had not attended the Tribunal and the case was relisted to the dates when I initially heard the case in March 2025. The respondents' counsel Mr Chiffers was recorded as explaining to Judge Barker that Mr Dewhurst was not an active participant in the first respondent business and that Mr Nicholls was the controlling director. However, he provided a fit note explaining that Mr Nicholls was unwell, despite allegations made by the claimants that he was actually away on holiday.
27. Further case management orders were made to ensure that the case was ready for the hearing dates before me due to the respondents' failure to provide full disclosure of documents. Unfortunately, the respondents continued to delay their compliance with the case management orders although bundles and witness evidence were available for the preliminary hearing before me. There was also some anxiety about Mr Chiffers role as a direct access barrister continuing to represent the respondents but fortunately, he was able to remain on record.
28. In preparing for this case on the morning of the first day, I became aware that Miss Y Barron and the claimants' witness Mr A Moore had previously

appeared before me in relation to a claim that they had brought against a former employer under case number: 2402165/2020 and which I determined on 19 January 2022. Mr Nixon had also brought a claim against a former employer under case number 2405561/2020 and which Judge Shotter determined on 27 March 2021. I felt it was appropriate to inform the parties of these cases, but also that it appeared unlikely those decisions would have any direct relevance to the matters that I was considering in these proceedings. None of the parties objected to my involvement with this case nor did they request that I consider the question of recusal.

Issues

29. The issues which the Tribunal has been asked to consider following the PHCM before Judge Batten on 10 June 2024 are as follows:

- a) Were any claimants in employment with any of the respondents at the material time in accordance with section 230 Employment Rights Act 1996 (ERA)?
- b) If not employees, were any of the claimants workers at the material time in accordance with section 230 ERA?
- c) If not, were any of the claimants self employed at the material time?
- d) Which respondents, if any, was each of the claimant's employer for the purposes of the claims brought? if none, who was the employer?

30. Having discussed the issues with the parties, I adopted a view that it would be first necessary to determine employment status before determining which (if any), of the respondents employed or engaged the claimants.

Evidence used

31. The claimants each gave evidence as follows and in the following order:

Day 1 (20 March 2025)

- a) Miss Y Barron, (first claimant)

Day 2 (21 March 2025)

- b) P Hood, (second claimant)
- c) Mr J E Nixon, (third claimant)
- d) Mrs R A Taylor, (fourth claimant)
- e) Mr S M Taylor, (fifth claimant)
- f) Mr Allan Moore, (claimant witness)
- g) Mr C Platt, (respondent witness)

h) Mr D N Mead, (respondent witness)

Day 3 (28 May 2025)

- i) Mr M Nicholls, (fourth respondent)
- j) Mr C Dewhurst, (third respondent)

Although witness statements had been produced by the parties for Mr Fraser (claimant) and Mr Foley (respondent), it was confirmed on Day 3 that they would not be called to give oral evidence. Consequently, their written witness statements that were provided for this hearing would have limited evidential value.

- 32. Documents were contained in a substantial bundle of some 744 pages. In addition to this, it was agreed that the respondent could add a further bundle (which I marked as 'R1'). This consisted of email correspondence between Mr Chiffers and Ms Allison Jackson who is the Lead Office Licensing at Cheshire West and Chester Council ('CWAC') during October to December 2024 regarding the use of taxi operating licences. It also included a copy of the CWAC Private Hire Operators Licence for 'ABC Taxis NW Ltd' (who are the second respondent), for 30 April 2021 until 29 April 2026 and a copy of The Statement of Licensing Policy Hackney and Private Hire (March 2024) for CWAC. These documents were also included within the main hearing bundle.
- 33. What struck me during my hearing and subsequent deliberations in this case was the problematic nature of the witness evidence and the hearing bundle.
- 34. In relation to the claimants and the individual respondents, I found that their witness evidence to be very muddled in the main and therefore less than credible. Their statements did not focus upon properly addressing the list of issues and taking me to the relevant documents within the bundle so that I could devote a proportionate amount of time to my deliberations. Consequently, I have been required to spend far more time than is reasonable in considering this case even allowing for the fact that I was dealing with five claimants and four respondents.
- 35. In relation to the documentary evidence, the parties have provided excessive and unfocused material, a great deal of which was not referred to in the witnesses' statements or oral evidence and this has also necessitated additional time on my part being spent in trying to make sense of the cases as put.
- 36. Finally, this case with its numerous parties and complicated history is exactly the sort of case which would have benefited from a cast list, a chronology, and an essential reading list. I acknowledge that Mr Chiffers did provide me with a skeleton argument, but ultimately, I found it necessary to prepare my

own chronology based upon the relevant documents and this can be found in the Annex to this judgment below.

37. In making these comments I take note of the fact that both sides were not always represented throughout the proceedings. I would also note that while the claimants were represented at the preliminary hearing by Mrs Hughes who is not legally qualified, she was nonetheless familiar with the Tribunal process and has previous experience from conducting her own Tribunal proceedings.

Findings of fact

38. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, simply what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point is not referred to within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.
39. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on balance of probabilities the most likely way/reason in which an incident arose.

Regulation of taxi services in the local authority area of Cheshire West and Chester Council ('CWAC')

40. CWAC is the relevant licensing authority for the issue of licences for taxi operators, hackney cabs, and private hire cabs. It also engages with businesses and individuals for the provision of transport contracts, such as the delivery of school transport for children, young people, and vulnerable adults.
41. The taxi industry is regulated by local authorities who are given the power to do so by Local Government (Miscellaneous Provisions) Act 1976 ('LGMPA 1976'). As a licensing authority, CWAC has developed a series of policies and procedures which relate to the regulation of the industry, and which are reviewed on a regular basis. Documents within the bundle which have been produced by CWAC are as follows:
- a) Statement of CWAC's Operator's Licensing Policy with numerous appendices including requirements for vehicles, conditions for private hire operation, the fit and proper person test for drivers; and,
 - b) List of all Licensed Operators within the CWAC area at the relevant time to which this case relates.

There is also a copy of the terms and conditions that apply to the CWAC school transport contracts.

42. In terms of relevant roles within this case, the following terms are relevant:

- a) An 'operator' is a person holding a licence to operate private hire vehicles issued by CWAC under section 55 LGMPA 1976;
- b) A 'private hire vehicle' is the vehicle provided for hire with services of a driver for the carrying of passengers and licensed under section 48 LGMPA 1976; and,
- c) A 'driver' is the holder of a dual driver's licence (hackney and private hire), issued by CWAC under section 45 of the Town Police Clauses Act 1847 and section 51 LGMPA 1976.

43. Within the appendices of CWAC's Operator's Licensing Policy, Appendix C deals with Conditions for Private Hire Operators and section 1.0 explains that the licence granted by CWAC is only for those named in the original application and is not transferrable. Similarly, the licence only applies to the premises specified in the licence, (p237). Section 2.1 requires the operator to provide amongst other things, '*adequate...staff to provide an efficient private hire service to the public*', (p235). While reference is to staff, there is no requirements placed upon operators concerning the employment status of those whom they engage to work for them. This is logical given that for the local authority, the regulation of the local taxi industry and the provision of good taxi services to the public, is their primary duty.

44. In terms of drivers, the emphasis is upon them holding a relevant licence and being deemed a '*fit and proper person*' in accordance with Part II section 51 and 59 LGMPA 1976. There is no expectation that the drivers be engaged as employees or workers.

45. A list is held by CWAC of all operator's licences awarded including the licence number, the licensee, their trading name, licence address and start and end dates, (p272-290).

46. Insofar as it is relevant, the provision of transport services to CWAC for the carrying of passengers using vehicles adapted to carry up to 8 passengers is subject to a set of standard terms of conditions, (pp294-372). Given that it involves the transport of children, young people, and vulnerable adults, it is a lengthy document with numerous appendices.

47. In terms of the definitions used within the contract, reference is made to 'Employees' but it is described as applying to any person employed by the contractor to perform the Contract and '*...which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives ...*'. This is a very wide definition and goes beyond that provided in section 230 ERA 1996 relating to employees and workers. Where it is necessary to do so, employment law is specifically referenced in relation to the Transfer of Undertakings (TUPE) Regulations

2006. I therefore accepted that the purpose of the employee definition used in this document, is to identify the role or work carried out under the contract, rather than their employment status. What is clear, is that the contract does not expect contractors to formally employ those working to perform the transport specified, (pp297-302).

48. The transport contract does impose conditions upon the contractor concerning how their staff may access CWAC premises even going as far as to require their replacement, but this is very much in relation to issues of safeguarding, (p305-6). This includes ensuring that the drivers retain hackney carriage and/or private hire licences, (p324) and to provide a list of all names and addresses of drivers and passenger assistants. Operators are required to identify those drivers who will be regularly redeployed, (which is important where the passenger has additional needs), (p326) and to attend training courses as appropriate, (p327). The duty to provide replacement cover rests upon the contractor when looking at the contract. If the contractor fails to provide replacements, they agree to be responsible for additional costs together with an administration fee of £100, (p329). Related to this provision, the contractor cannot engage a sub contractor without the written permission of CWAC, (p330).
49. In terms of the role of CWAC and its relationship with drivers and passenger assistants, there was a requirement that they operate in accordance with Appendix 4 of the CWAC terms and conditions which provides a detailed Code of Conduct, (pp339-372). However, given that the work involves the transporting of young people, many of whom would have special educational needs ('SEN'), this is a regulatory and safeguarding matter. I did not accept that it amounted to CWAC substantially determining the terms upon which these personnel were engaged by the contractors. This remained a matter between the contractor and those individuals whom they engaged.
50. This finding also extended to CWAC's role in regulating taxi operators and taxi drivers. As a regulatory authority, it was simply fulfilling a function given to them by central government legislation. Again, the way taxi business personnel were engaged (within the regulatory framework that was required), was a matter between the operator, its operator staff and drivers.

The respondents

The first respondent – ABC Taxis Chester Limited

51. The first respondent 'ABC Taxis Chester Ltd', (ABC Chester), is a registered company number 13509377 and its registered office is 141 Brook Street, Chester, CH1 3DU. It was incorporated on 13 July 2021 and its nature of business is coded as 49320 – taxi operation. The company is recorded as being 'Active – Active proposal to strike off', (p373-4). According to the Companies House filing history, accounts were submitted for a dormant

company, although more recently Total Exemption full accounts have been filed up to 2024. Following an application to strike the company off the register on 6 October 2023 made by the directors (who are the third and fourth respondents), the application was suspended on 24 November 2023, because of an objection received by the Registrar.

52. The unaudited accounts for ABC Chester for the year ending 31 July 2022 refer to it being a dormant company with an average number of 0 (nil) employees since 2021.

The second respondent – ABC Taxis (NW) Limited

53. The second respondent 'ABC Taxis (NW) Ltd', (ABC NW), is a registered company with number 11937949 and its registered office is 15 High Street, Runcorn, WA7 1AP, (p395). It was incorporated on 10 April 2019 and its nature of business is coded as 49320 – taxi operation. The company is recorded as being 'Active' with 'total exemption' full accounts made up to 2024. The two directors are the third respondent and Keith John Roberts. Mr Roberts and an earlier named director Jordan Roberts are not parties to this case. However, Mr Nicholls refers to Jordan during an SMS text exchange with Miss Barron on 3 August 2020 where he accepts her concerns that one month following the opening of the business, the systems needed setting up properly. Mr Nicholls confirms that *'Right I'll make sure Jordan does it for Monday 100%, (p434)*. There are also messages with a person known as 'Jordan ABC' in September 2020, (p439). On balance, considering Mr Nicholls' relationship with ABC NW and that company's supply of communications equipment for the new business, he can only be referring to Jordan Roberts.

Third respondent – Craig Dewhurst

54. The third respondent 'Craig Dewhurst' (Mr Dewhurst) is recorded as a current director of both ABC Chester (since 13 July 2021) (pp375-385) and ABC NW, (since 3 June 2019) (p386).

Fourth respondent – Michael Nicholls

55. The fourth respondent 'Michael Nicholls' (Mr Nicholls) is recorded as a current director with ABC Chester and was appointed on 13 July 2021, (pp375-385). Mr Nicholls previously worked with the first and second claimants at another taxi business in Chester, (see below).

Background to respondents' involvement with the claimants

56. There is one Private Hire Operators Licence available within the bundle (see 'R1') and issued by CWAC subject to the Local Government (Miscellaneous Provisions) Act 1976 and CWAC Private Hire Operator Conditions under

Licence number O1133 and in the name of 'ABC Taxis NW Ltd'. Two addresses from which bookings can be taken are provided and which are: 7 Vale Gardens, Helsby, Frodsham, WA6 0BT and 141 Brook Street, Chester, CH1 3DU. They shared the latter address with the registered office of ABC Chester. The licence was valid from 30 April 2021 to 29 April 2026 and permitted a maximum number of 49 vehicles to be operated under this licence.

57. Mr Nicholls had known Miss Barron for many years and recalled many meetings with Mr Roberts and Miss Barron regarding the opening of a taxi business, but he could not recall of any precision as to when these meetings took place.
58. He confirmed that he was not “*up on law*” but accepted he needed an operator's licence to operate as a taxi business. He referred to the private hire operator's license provided by CWAC which named ABC Taxis NW Limited as the licence holder and trading name with the address at which bookings being taken as 7 Vale Gardens, Helsby, Frodsham and 141 Brook Street, Chester. The license was valid from 30 April 2021 until 29 April 2026. (p594). Similar licences were also shown for Liverpool City Council naming ABC Taxis NW Limited using a Liverpool address and which was valid from 15 March 2021 until 9 March 2024 and an operator's licence for Halton Borough Council from 25 October 2021 to 16 July 2025 in the name of ABC Taxis NW limited as licence holder and trading as ABC Runcorn.
59. It was put to Mr Nicholls that if he had intended to operate using a different company name (for example using a trading name ABC Chester Limited), he would have identified that business as the trading name in the CWAC operator's licence. He said that Craig Dewhurst had spoken with licensing at CWAC, and they had advised that they could run a separate business from the same Chester premises as ABC NW.
60. When considering the details provided by CWAC regarding the statement of Licensing Policy Happening in Private Hire dated March 2024 it was noted that Section 1 of Appendix C explains that under the Local Government (Miscellaneous Provisions) Act 1976 the licence which is granted to those named on the original application is not a transferable document. Mr Nicholls said he did not agree with this position and CWAC had confirmed they could recognise the first respondent and the second respondent as separate companies, but they would not need a separate operator's licence. ABC Chester could operate from premises in Brook Street but could rely upon the license for ABC NW. He added that CWAC would only require a director from ABC NW to be also a director of ABC Chester, (p235). It was also mentioned that invoices supplied for services would name the company as ABC taxis NW Limited, (an example could be found at p 496). Mr. Nichols said he was not very good with computers, and he did not invoice anyone directly. He said that

because he did not personally produce the invoices the AutoCab system was used, and ABC NW would accept jobs onto their system for Chester drivers.

61. As will be discussed below, Miss Barron and Mr Nicholls began operating a business advertised as 'ABC Chester' from 3 July 2020, yet the copy operators' licence that was provided within the bundle commenced in April 2021. Although I did not hear specific evidence relating to the question of whether this licence was a renewal of an older one, I concluded that given Miss Barron's knowledge of the taxi industry, an appropriate operators' licence was available and relied upon by ABC Chester from July 2020 to April 2021.
62. Other than the CWAC documents including the ABC Taxis NW Limited private hire operator's licence dated 30 April 2021, there was minimal evidence from licensing officers at CWAC. In the R1 bundle, there was an email exchange between Mr Chiffers and Allison Jackson, Lead Officer Licensing Authority. He did ask Ms Jackson by email on 19 November 2024 whether:

'...ABC Chester Limited [meaning ABC Taxis Chester Limited] to operate as an independent company but use the licence of ABC North West Limited [meaning ABC Taxis NW Limited]? Did you sanction this arrangement?'

On 3 December 2024, Ms Jackson replied and explained that the position was as follows:

'The current operating licence [i.e. the one issued on 30 April 2021] as you are aware is for ABC Taxis NW Limited but can under this operator licence operate from 141 Brook Street, Chester, CH1 3DU'.

This was the final email in this conversation that was disclosed and while it was not made clear why Ms Jackson did not properly answer Mr Chiffers question (and she did not give evidence during the hearing), it nonetheless gave a clear position from CWAC as a licensing authority. This position was that the licence was issued to ABC Taxis NW Limited and while they have operator's licences for other places, the CWAC licence allowed them to operate from the ABC address in Chester. What it did not do, was confirm that ABC Taxis Chester Limited could 'piggyback' onto the ABC NW licence and assume the role of a legitimate operator.

63. On balance, I therefore concluded insofar as CWAC was concerned, whatever the status of ABC Chester, whether as an unincorporated business or limited company, at the relevant time, it was not the legitimate taxi business being operated out of Brook Street, Chester. As will be discussed below, this supports an argument raised by Mr Nicholls to Miss Barron in September 2021, that ABC Taxis Chester Limited was registered for reasons not directly connected with operating a taxi business in this location and instead, this remained the responsibility of ABC NW.

64. There was no dispute that the separate school contract which some Chester drivers worked on was arranged by ABC NW and not ABC Chester and engaged self-employed drivers who be paid periodically from ABC NW when the contracted payments were received from the local authority of school. This was not related to the issues before me in this preliminary hearing, other than that some of the claimants would also undertake these contracts which would be worked at the beginning and end of the school day. This would mean drivers would be able to work as private hire drivers outside of these commitments.
65. Mr. Nicholls was referred to the ABC Taxis Chester limited unaudited accounts for the year ended 31 July 2022, (p388). They were submitted to Companies House on 30 April 2023. On page 392 of the bundle, the account for the year ending 31 July 2022 identified the company as dormant and that it had zero employees, (p393). Mr. Nicholls argued that this meant it was run by Miss Barron and himself and they were not employees. He also said he did not know how to file accounts and he did not know how to deal with this document. He maintained that ABC Taxis Chester Limited was trading at the relevant time to which this case related. He blamed the accountant Mr. Platt for any errors with pay slips which resulted in Miss Barron and Ms Hood receiving pay slips from ABC Taxis NW Limited.
66. Mr. Nicholls also confirmed that the AutoCab agreement which provided software services from 25 June 2020 identified ABC Taxis (NW) Limited as their customer and not ABC Chester. He said that this system was not used by ABC Chester. I understood that the AutoCab business was a taxi dispatch system which allows taxi operators to take bookings from customers and manage their allocation to their taxi drivers. He said that ABC Chester used the ABC NW system and paid them a weekly fee as it was too expensive a system for this fledgling business to purchase itself. However, this was another factor which demonstrated the close relationship between the first and second respondents as well as the third and fourth directors, (as well as the dominant role played by ABC NW).
67. In terms of the taxi drivers engaged by the Chester office, Mr Nicholls said that most drivers would pay their settle directly to the Chester office in cash and reference was made to a Settle Sheet with driver numbers identified and ticks indicating who have paid their subtle on the 8th of June 2023, (p509). It was noted that all those drivers whose driver numbers began with six were recorded as Chester drivers on the AutoCab system.
68. In relation to CWAC's Provision of Transport Services standard terms and conditions document, (p294), Mr Dewhurst confirmed that he was the contract manager identified in section B3.21 of the document. He accepted that while this contract would not permit the subcontracting of the contracted work to another business, he argued that Chester ABC was operating under the same

licence as Chester NW and that to use this business would not amount to subcontracting. Without positive evidence from CWAC relating to this matter however, I was unable to accept that this statement had any credibility.

69. Mr Dewhurst said that because of the competition in Chester arising from the large operator KingKabs, it did not make any sense for him to go into competition with that business in the Chester area. He said that Mr Nicholls and Miss Baron wanted to begin the business in this area, but he was sceptical because the new business would need to engage more than 50 taxi drivers so that they could compete effectively with KingKabs and other large providers. He said that he tried to help them, but it would take time for the operator's licence to be transferred to ABC Chester. Consequently, he said that ABC NW were only identified while this transition was ongoing.
70. Mr Reeder gave evidence on behalf of the respondents and described his work as a taxi driver driving in the Chester area and taking calls from the Chester office of ABC. He was aware that the business must have an operator's licence but was unable to recall reading the name of the business to which it had been granted by CWAC. He said that as a driver he was responsible for paying his own taxes and national insurance. He would receive payments from customers and would pay ABC (whether NW or Chester), his settle. The nature of his shift would be to log onto the ABC system to say that he was available, but it would be his choice as to which fares he would take. He accepted that if he worked for another company, he would have to pay another settle fee.
71. He did confirm that he did contract work for school transport and together with a friend they had obtained an operator's licence to accept work from CWAC. I accepted his evidence that this was separate to the work that was received from ABC and was to provide contract work to the local authority rather than operating as a private hire or hackney cab taxi business. This would involve either his friend or him carrying out the driving personally or engaging other drivers to do so. However, this would be subject to the safeguarding requirements above described above.

The claimants

The first claimant

72. The first claimant 'Yvanna Barron' (Miss Barron) previously worked with the second and third claimants and the fourth respondent at a taxi company called Abbey Taxis. They were all engaged as dispatch/telephone operators although the third claimant, Mr Nixon would also work as a taxi driver. In December 2019, Abbey taxis was sold to KingKabs and they were all dismissed, (Mr Nixon had left Abbey some time before to work in Runcorn). This dismissal was the subject of the Tribunal claim which was heard by me under case number 2418209/2020. That case is not directly relevant to the

issues under consideration in this case before me, other than that I take note of KingKabs' size (Mr Dewhurst described it as a '*behemoth*') and that the Miss Barron and her colleagues relished the prospect of creating a new taxi company, in Chester, which would be a competitor to KingKabs. I accepted that the Miss Barron was unhappy with how the taxi industry had changed in recent years and felt that smaller and more family orientated workplaces supporting a local community were better for both those working for taxi businesses and those using them.

73. Mr Nicholls was by this time working for the second respondent. When both Miss Barron and he agreed that there should be another taxi firm in Chester, he said he would approach his employer at ABC NW. Miss Barron asserted that this was so ABC NW could open a branch at Chester, (at that time they operated in Runcorn and Liverpool). Miss Barron lives in Chester.
74. In her original claim form in section 15, Miss Barron asserted that before the start of the company many discussions were held between her, James Nixon (third claimant) and Mr Nicholls (fourth respondent). It was also suggested that '*Garry...the owner attended one*'. It is not clear who Garry was as he was not a respondent to the proceedings, nor could he be identified as an officer of either ABC Chester or ABC North West. In any event, the claimant referred to the offer of shares in the company, although it was not clear which company this related to. On balance, I concluded that this related to ABC Taxis operating in Chester, but no specific detail was provided as to when they would be offered and from which company they would involve.
75. There was limited documentary evidence concerning precisely when ABC Chester began operating, but there were social media messages enclosing a copy of a 'flyer' or handbill' on 3 July 2020, stating that 'ABC Taxis opens in Chester', (p415) with further similar messages confirming that ABC Chester was operating in July 2020 and seeking drivers, with various offers relating to settle payments (p416, p417, p418). Mr Nixon in his claim form at section 8.2 had asserted that he had worked for the respondents '*from the very start in 3 July 2020*'. Miss Barron also related to this start date in her resignation letter. I therefore concluded that a business known as ABC Chester was operating within the Chester area and before ABC Taxis Chester Limited was incorporated. Based upon the available evidence, Miss Barron was working as an operator from 3 July 2020.
76. It is understood that when the business began in July 2020, Mr Nicholls and Miss Barron did not have premises to work from and she actually worked as an operator from her home address until the Chester premises in Brook Street were opened. Considering the 30 April 2021 date of the operating licence of ABC NW being issued by CWAC, it was not clear whether Mrs Barron and Mr Nicholls were operating ABC Chester with a valid operating licence or not. However, she was working in the operator role from this date, working long hours and with limited payments being received.

77. The only payslips that were included in the bundle that related to Miss Barron were dated between 24 February 2023 and 2 June 2023, being issued during this period on a weekly basis, (pp430-432). They were issued in the name of ABC Taxis (NW) Limited and while recording the provision to pay tax and national insurance, there were no deductions to the recorded gross pay. I was not clear whether this related to the claimant's desire not to work beyond a certain number of hours to preserve her entitlement to receipt of benefits from the DWP. This does, however, appear to be somewhat different to her assertion in the two resignation letters to have worked '24/7 during Covid 19', *'I worked at least 50 hours per week'* and referring to long hours being worked from 3 July 2020, (pp423-6 and pp428). However, at this stage, I accepted her evidence that as one of the founding people working in Chester for ABC, she agreed to work for low wages in return of the promise of shares.

78. While Miss Barron believed that she had been promised shares in the taxi business, she described being taken by surprise when she discovered the registration of ABC Taxis Chester Limited and her not being included a shareholder. Her message sent to Mr Nicholls on 16 September 2021 described her discovering the previous evening that the company had been set up and that Mr Dewhurst and he were the sole shareholders, adding:

'...nice to see I've been left out, I spent nearly a whole year with that phone lots of our customers are with us because of me but I did that because we (me and you) were going to be having equal shares?? [sic]' (p442).

79. Mr Nicholls reacted badly to this message and in the 'vocal style' that people often use on SMS messaging, replied as follows:

'Wow really instead of thinking bad of me like iv been upto take over with Craig not a problem and the guarantor for the shop by Allan's [understood to be Allan Moore a witness in this case and a claimant in previous proceedings] means I don't have to worry about keeping it all together so I don't get fucked over. And as for customers its not just you they are hear for. Sick of the shit get and how I'm made to feel coz of things when I told you about this. But like I said happy for you to take over if you think I'm fucking you over in any way [sic].

Bu the way that company way only set up not to run as abc chester to stop the buisnests rates and that's all.' [sic] (p442-3)

80. Miss Barron then expressed disappointment in not being told. Mr Nicholls replied saying he did tell her and also responded as follows:

'Send me all your details and I'll have changed today happierly and I don't want to be on it. Not only will it possible fuck my motorbility up and if all fails I'll end up owing all the money. Not sure you so seriously send me your

details name address and dob and NI number and I'll get it changed to you.'
[sic] (p444).

In conclusion, Miss Barron replied:

'No Mike, you told me the company had to be listed on companies house but you didn't tell me you and Craig had gone on as directors, as for not speaking to you, I didn't see it till late, but you know you didn't tell me -read your message you've gone straight on the defence, that's what people do when they are in the wrong mate, as for having my name on there – eh no trust any of them, it's the point of being kept in the dark again I'm gutted with, but it is what it is! So be it' [sic] (p444).

81. In her later resignation letter (see below), Miss Barron stated that *'I joined ABC on the pretence that if I worked hard and accepted the low pay I would be rewarded with company shares', (p427).* She also mentioned in her resignation letter having always *'...tried to guide, advise and discuss with Mikey [Mr Nicholls] the correct way we should be operating'* in relation to how staff and drivers should be engaged. This was something that she had referred to throughout the case and the creation of this new business was driven by her enthusiasm and past knowledge of the taxi 'trade'. I concluded on balance that while she had integral role concerning the running of the business until September 2021, the relationship and status that she had within the ABC Chester business began to change following her exchange with Mr Nicholls.
82. During her evidence, Miss Barron argued that when she referred to her role as being a 'partnership' she said that it meant in the context putting hard work in rather than concerning the ownership of the business. She maintained her argument that the question of shares was simply because the business could not pay her normal wages initially. Miss Barron asserted that she had no indication that she would own half of the business and insists it would simply be receipt of some shares and no mention of a 50% share in the business was mentioned.
83. She also argued that Mr Nicholls had control of the business, but I find that while this became more likely when the ABC Chester was incorporated without her involvement, the position was different prior to this date. While Miss Barron believed that she had some stake in the ownership of the business initially, the exchange of messages in September 2021 demonstrated her realisation that she was now in a subordinate position to the directors of ABC Chester. The tone in her messages on 16 September 2021 was of someone who had felt they had been betrayed by someone whom she believed was a partner. From around this date, Mr Nicholls failed to demonstrate that her role was as a co-owner of the business. No contract of employment was issued however, and for a while, there is little evidence of any formal structure of pay and payslips being established.

84. The messages on 'ABC Drivers' SMS group suggested that Miss Barron had a significant management role in the Chester office, and I accepted that initially, the decisions were made in conjunction with Mr Nicholls, (p653).
85. In considering these documents I was not assisted by the evidence of any of the witnesses, particularly Miss Barron and Mr Nichols concerning what their intentions were up this point regarding the operation of ABC Chester and how they would run it. However, considering their original aspirations and the way in which they began working in July 2020, I concluded that until ABC Taxis Chester Limited was founded, they wanted to operate as a partnership. Miss Barron was cautious as to the role she should assume within the business but the exchange of messages with Mr Nicholls together with the way they assumed roles in its operation demonstrated that in her mind they were running the business together. The involvement of ABC NW was necessary for the access to an operator's licence and also the equipment for taking bookings and communicating with drivers. But the overall tone is of two people in a partnership of equal shares realising that they had different approaches. Additionally, Mr Nichols indicates that the incorporation of ABC Chester was a device to avoid business rates rather than for it to operate as a taxi operating company in its own right. This is supported by the ongoing dormant status of the business and the way in which it appeared to 'wither' as soon as it was created. I say this, because there was no evidence within the limited available accounts that it operated as a business in any meaningful sense.
86. Miss Barron continued to work for nearly two more years following her conversation with Mr Nicholls in September 2021. Messages were exchanged on 13 June 2022 about Mr Nicholls losing his temper at the premises in Chester and Miss Barron stating that she wanted to fixed work nights (with him working days), (pp451-2). There were also emails exchanged on 19 and 20 July 2022 where Miss Barron referred to her wages being underpaid and asked him to '*...get whoever deals with my wages to update this month...*' and gave a new email address for her payslips to be sent. She added that the DWP had invited her to a meeting because her pay did not reflect the 16 hours per week, she had previously stated for the purposes of receiving Universal Credit, (pp453-454).
87. She continued to work into 2023 but by June of that year she became unhappy when the drivers were invited to a meeting on 26 June 2023 and to which she had not been invited, where they were informed that the taxi operations would move to ABC NW's Runcorn office. She sent two letters to Mr Dewhurst and Mr Nichols with one of them also referring in the heading to them being '*...at ABC and or ABC NW*'. They were broadly alike, dated 15 August 2023 and repeated many of the other letter's paragraphs, (pp423-426 and pp427-428).

88. The first respondent had submitted in the response to the claim that Miss Barron walked out of the ABC Chester office on 26 June 2023. There were a series of messages between Miss Barron and Mr Nicholls during June 2023 concerning issues arising at work. This was followed by her messages sent on 26 June 2023 and 27 June 2023 where she reported that she was stressed and could not come into work, (p463). Mr Nicholls replied on 29 June 2023 and referred to an 'abrupt call' from her that she had walked out on 26/27 June 2023 and referred to this as being '*the last straw*'. The context of the message is consistent with Miss Barron resigning and walking out as described in the first respondent's grounds of resistance. His message referred to the ABC Chester email address and he requested that all further correspondence be sent there, (p465-6). There then followed a few more messages from Miss Barron seeking to engage with Mr Nicholls and explaining that she would only work if she received her pay at the correct minimum wage level. She then explained that he had removed her on Sunday 25 June 2023 from all the ABC Chester WhatsApp groups. She also mentioned that the next day on Monday 26 June 2023 he held a meeting with drivers without inviting staff explaining that the operation was moving to Runcorn as described in the resignation letters sent on 15 August 2023, (p469). She denied that she had left the company and requested payment for the shifts that she had worked.
89. There then followed a period where she remained sick and expected payment of SSP. Mr Nicholls did not arrange for payment of these figures and behaved as if Miss Barron had resigned. She did appear to speak with Mr Dewhurst on 30 June 2023 and in her message sent to Mr Nicholls on 1 July 2023 she referred to that conversation and that there had been a promise that Mr Nicholls would bring her outstanding wages to her house, (p484).
90. In her resignation letter dated 15 August 2023, she explained that when:
- 'I started ABC with Mikey I was not in a position to become a partner at the time. I agreed to work my **** off for shares in the company, (expressed verbally by Mikey and Gary) otherwise I would not have worked myself into the ground at the expense of my family time and my own health. It is obvious from your treatment of me during the reorganization of the company that you did not intend to [honour] your commitment.*
- 'I started the Chester part of the ABC group with Mikey. I work 24/7 during COVID-19 for very little and or no pay. I gave you all and more to get the business off the ground parenthesis even though my own personal problems and you have undermined me insulted my industrial knowledge at every turn.*
- 'You have failed to follow the ERA 1996 and not given me a written contract minimum wage correct pay statements holiday pay or my sick pay, (you have not paid me my agreed pay you still owe me). You fail to honour any of my*

legally recognised breaks...I worked a minimum of 4 12 hour shifts 48 hours a week but I was on call 24/7. You have had me pay other companies out of my own money promising to pay me back and you never have.'

The letter went on at some length but ultimately, she referred to a final straw being: *'a meeting which took place on the 26 June 2023 informing only the drivers that the operation was being moved to Runcorn, neither I nor other staff members were invited to this meeting nor were some off the drivers'*. She concluded by identifying outstanding wages and holiday pay totaling more than £118,000, (pp423-426).

91. The further resignation letter also sent on 15 August 2023 was shorter than the long letter and address specifically to Mike Nichols and Craig Dewhurst. It was confirmed as a resignation letter and argued that ABC had breached her contract on many levels. She described the business as the ABC group and did not specify whether it was ABC NW or ABC Chester.
92. On balance, I concluded that both parties knew the employment contract had come to an end on 26 June 2023. Mr Nicholls behaved petulantly towards Miss Barron and his inability to engage with her directly did not help in the resolution of their working relationship. I also concluded that while Miss Barron referred to the final straw being what happened on 26 June 2023, she allowed time to elapse before revisiting the question of resignation in August 2023. I determined that on balance that she used this additional time in order that she could amplify her reasons for leaving and set out what she believed was a valid claim. In these August letters she asserted several employment rights. It is not clear whether she used the time between June and August to consult with Mrs Hughes, but the letters in many respects bear the format of letters before action rather than letters of resignation.
93. Miss Barron confirmed that she never received a contract of employment and was therefore unaware of any notice period being required of her. She said she was never informed that she was not employed by ABC and her belief was that her employment contract was with ABC NW. She said she did not receive a pay slip every week but got a few out of time and that each one would identify the business paying her as ABC NW. This was consistent with the payslips enclosed within the bundle.
94. It was confirmed by Mr Platt on 17 October 2024 in an e-mail to Mr Dewhurst that Miss Barron was put on the payroll of ABC taxis NW on 2 May 2022. Mr. Platt argued that due to an error in miscommunication, Miss Baron was supposed to have been added to the payroll of ABC Taxis NW Limited in error and she should have been added to ABC Chester Limited. Mr. Dewhurst also argued that this was an error, (pp588-9).
95. During his evidence, I found Mr Platt to be a very poor witness who refused to commit to answers despite being under oath. He gave confusing evidence

concerning the status of ABC Chester and was reluctant to concede whether ABC NW were the actual company engaging and paying the claimants or whether ABC Chester had an actual role to play regarding the engagement of operators and drivers. His email dated 17 October 2024 was created during these proceedings and was not contemporaneous with the relevant dates to which this case relates. While it suggests that Miss Barron and Ms Hood were on ABC Chester's payroll, this is inconsistent with ABC NW's name being the payroll provider on the payslips and the ABC Chester accounts recording nil employees, (p588). I must therefore conclude that Mr Platt was not a reliable nor a credible witness.

96. Additionally, I did not accept Mr Dewhurst's argument that ABC NW would have held Miss Barron on their payroll in error from 2022 until her employment ended as being a credible one to make. On balance, I find that it was agreed by Mr Nicholls and Mr Dewhurst that Miss Barron would be placed on ABC NW's payroll from 2 May 2022 and that is when she began to be formally paid by that company. Chester ABC's status as a dormant company was a deliberate one and as has already been mentioned, it was stated that it never had any employees.
97. Finally, I would add that Mr Moore's evidence supporting Miss Barron was at best hearsay as he was not directly involved with what was happening to the ABC business at the time. I considered that his evidence was not credible given that it served to simply side with the claimants' case and held no real evidential value. While it is understandable that intimate nature of taxi industry does create tribal loyalties, it is not enough simply to support one side's case, evidence has to be provided that it relevant, credible and reliable.

The second claimant

98. The second claimant 'Patricia Hood' (Ms Hood) worked with Miss Barron and Mr Nixon at Abbey Taxis as a dispatch/telephone operator and was dismissed at the time of the sale of the business to KingKabs. She said that she approached Miss Barron about working for ABC Chester in 2021 but asserts that she was told to approach Mr Nicholls before she could be appointed.
99. She began re-training as an operator in June 2021 and confirmed that this was arranged by ABC. This was not confirmed by the respondents and no documentation was provided. I noted that this training took place some time before Ms Hood began working with ABC and I was unable to accept that this training was paid for by one of the respondents. The messages within the bundle between Miss Barron and Ms Hood regarding her joining ABC date from 20 and 21 September 2021, (pp490-1). I concluded that the training was therefore paid for by Ms Hood or somebody else unconnected with the respondents. There then followed an introduction on the ABC Drivers WhatsApp group by Mr Nicholls who explained to them that she was an experienced operator. In the absence of any convincing evidence to the

contrary, I concluded that she commenced work on 21 September 2021, (pp492-3).

100. Ms Hood was clearly a popular 'hire' with her fellow operators and the initial messages with Miss Barron described her rejoining 'the family'. I concluded from the limited evidence available that because of the close relationship with Miss Barron and others, Ms Hood was willing to tolerate the low pay for a while but by 12 April 2022, she was messaging Mr Nicholls that she needs '*up on my wages*' for covering additional shifts, (p497). What I was unable to do however, was accept that initially, Ms Hood was engaged under a formal contractual relationship as she was unable to prove using the available evidence that a formal contractual relationship existed between her and one of the respondents. The relationship appeared to lack formality for the first months of her work with ABC and Ms Hood did not provide evidence to suggest that it had evolved into something more than that of self employment. It is surprising that more relevant documentation was not produced during the hearing, although given the previous orders for disclosure, it may simply have not been available. However, it did mean it was difficult for Ms Hood to clearly identify with supporting evidence, how she was engaged as an operator by the respondents.
101. Subsequently however, she was formally added to the ABC Taxis (NW) Limited payroll from 2 May 2022 like Miss Barron. This is evidenced by the HMRC Taxable Income statement, and which confirms that ABC paid her on a regular basis for the reference period of 6 May to 12 August 2022. Her weekly pay was £190.00 during this period, and it did not attract income tax or national insurance. There were a few weeks where nil monies were received, but in the absence of evidence to the contrary, I concluded that these were non working weeks. However, the reason for this is not clear from the document, (pp584-585).
102. In terms of her working patterns, Ms Hood said that the AutoCab system allowed calls to be taken and jobs to be allocated for both Chester and Runcorn. From 11pm, the Chester operators would finish, and Runcorn would take over the calls. She said that ABC Chester did not have an operator's licence and that they worked under the ABC NW licence. She worked in the Chester office 90% of time and from home 10% of the time.
103. She believes that once the office opened in Brook Street, Chester, she would work 4 12-hour shifts and that she believed it to be on the same basis as her work with Abbey Taxis. She said that she believed that was an employee of ABC NW. Ms Hood describes being answerable to Mr Nicholls, Mr Dewhurst and Mr Roberts of ABC Taxis NW. She confirmed that she did not have a written contract of employment and that she did not have a notice period.

104. She confirmed that she did not find customers and she simply answered the phones and took bookings. She said that she could not authorise any payments and was not involved with the management of the company. She worked the same 4 evenings and if she needed time off, she would swap shifts with colleagues, if possible, but she had to discuss this with Mr Nicholls. She referred to submitting fit notes when off sick but did not receive payments from ABC. She said she could not leave the office for a meal break when working.
105. Ms Hood acknowledged that her wages were low for the hours that she worked. She said that the DWP were placing her under pressure to look for other work, which I understood related to their obligation to pay tax credits to her because of the low pay received. She said that she was promised her pay would increase over time and that her tolerance of the poor rate of pay was because she had returned to a family business with friends, even though ultimately, they were working for ABC NW. She did confirm that she had discussed becoming a partner with Mr Nicholls and Miss Barron but decided to remain an employee. Ms Hood also said that that she had been promised shares by Mr Nicholls but like Miss Barron, this promise remained unfulfilled, and it was not clear whether it was used as a means of justifying the low pay for the operator role. She eventually complained to Mr Nicholls about her wages and hours of work on 12 April 2022, (p497)
106. Ms Hood was keen to separate Mr Nicholls, Mr Dewhurst and Mr Roberts from Miss Barron, describing her being answerable to these men, while Miss Barron provided advice to her concerning the AutoCab system and bookings. She denied that she was a joint owner.
107. Ms Hood ceased working for ABC and although there was no clear date of resignation or termination given, I understood that it arose on 29 June 2023 when she was informed that the office would be moved to Runcorn.
108. On balance, I accepted that Ms Hood was engaged as an operator and although her status was unclear during her initial period of work in this role. In respect of the pre May 2022 period, Ms Hood's case was not sufficiently persuasive based upon the available evidence, for me to accept that she was properly engaged with any clear contractual agreement (whether express or implied). She had thereby assumed the role of being required to provide regular and personal service to one of the respondents.
109. However, from May 2022, she was formally paid on the ABC NW payroll, and this continued until her employment ended. She worked regular hours and had a clear role as operator when attending work. A formal arrangement therefore existed from this date. While there may have been discussions regarding partnership and shares, this was no more than a discussion of aspirations between managers and her and did result in a change of her role within the business before her employment terminated at

the end of June 2023. It did however, support the informal arrangement that initially existed within the ABC business in Chester and where the actual status of those working for the business was unclear and unsupported by contemporaneous documentary evidence or compelling and persuasive witness evidence.

The third claimant

110. The third claimant 'James Edward Nixon' (Mr Nixon) worked with Miss Barron and Ms Hood at Abbey Taxis as a dispatch/telephone operator and also as a taxi driver. He left Abbey when the company was bought by King Kabs. He argues that he heard that ABC NW had opened a branch in Chester during lockdown and he was eager to work as a driver there. He believed that he was working under an ABC NW operators' licence and that because he committed to working only for them, he was not required to pay any of the 'settle' that drivers were routinely expected to pay to an operator on a regular basis.
111. He was a private hire driver and therefore had to receive work from the operator. He would be paid by the customer at the end of the journey unless it involved contract work. He described Mr Roberts of ABC NW first paying Mr Nicholls the monies due for the contract work which would in turn be paid to Mr Nixon every fortnight or thereabouts.
112. When giving his evidence, Mr Nixon accepted that the taxi companies generated income from settle that they received from drivers. His rationale behind his being excused from making these payments to ABC (whether Chester or NW), was that he was the only driver for 12 months and he assisted in getting the company afloat. All the other drivers who were engaged paid settle and he accepted it would not be a feasible business model for them too to be excused from paying it. He denied that it related to his personal relationship with Miss Barron.
113. In relation to Miss Barron, he argued that Mr Nicholls and she were joint managers of ABC's base in Chester, but they were not the owners.
114. When working for ABC, he said that he generally accepted account work and would eventually be paid by ABC although it would be generally late as it should be paid monthly. He accepted that he did not have to give notice to end working for the company. He said that he would be told the time, address and destination for customers seeking journeys by ABC and that he worked off a fare sheet. He agreed that there was no formal system in place where he was checked by ABC regarding his timings and whether he was late. He denied having ever worked at ABC's Runcorn office.
115. His taxi driver badge was with CWAC and not Halton Council although when working at night, the calls from the operator would come from the

Runcorn office and not Chester. Mr Nixon confirmed that he is registered as self employed with HMRC and pays his own tax and national insurance. He believed that although he worked out of ABC Chester's office, he was employed by ABC NW.

116. Mr Nixon gave largely a credible account of his work as a driver accepting work from ABC. His arrangement not to pay settle was an unusual one. I concluded that he was incorrect when denying that his relationship whether current or historic with Miss Barron played a part in this arrangement. While he may have driven a hard bargain by volunteering to be the first driver operating in connection with the Chester office, the agreement would have been an easier one for Miss Barron to make as a manager of the business. In many ways she had more knowledge of this side of the business than Mr Nicholls had. However, I was not persuaded that he was able to say credibly or with any certainty what the employment status was of Miss Barron and Mr Nicholls

The fourth and fifth claimants

117. The fourth claimant 'Mrs Roberta Anne Taylor' (Mrs Taylor) is a taxi driver.
118. Mrs Taylor's husband is the fifth claimant 'Stephen Michael Taylor' (Mr Taylor) and he is also a taxi driver.
119. Mrs Taylor explained that they had been advised by an accountant to set up a limited company for their business called 'SRT Travel Limited'. According to Companies House, this company's number was 12744496 and registered office was 82 Boundary Lane, Saltney, CH4 8LW. Its status is now 'Dissolved'. It was incorporated on 15 July 2020 and dissolved on 19 September 2023. The nature of the business was recorded as reference number 49320 – taxi operation. Mr and Mrs Taylor were both appointed as directors on 15 July 2020.
120. Any earnings from their work as taxi drivers would be paid into the company and they would receive an income from the company once expenses had been paid. They said that the company was only set up because it was advantageous for tax purposes.
121. Neither Mr nor Mrs Taylor held operators' licences and worked as private hire drivers. While their registered office for SRT was recorded as being 82 Boundary Lane, Chester (and which was also their address in the Tribunal proceedings), they argued that they could not hold an operator's licence because they did not actually have any Chester based premises. However, Mrs Taylor referred to being able to obtain an operator's licence for Flintshire and the licensing authority for that area must have concluded that they had a suitable address from which to operate.

122. Mrs Taylor believes she started working for ABC Chester through the ABC NW operators' licence on 18 October 2021 and that the manager was Mr Nicholls. She accepted that both she and her husband held driver badges and that they paid a set weekly settle to the operators so they can be referred work. She also confirmed that she was not told when she would work and what work she should do.
123. Her working hours were long with 6 days spent at work per week doing 12 hour shifts. She would usually work nights and Miss Barron and Miss Hood were the operators whom she usually dealt with. She asserted that work was fairly distributed by the operators using the AutoCab system but because she would regularly work 5 or more nights each week, she tended to get priority when allocated jobs because of her predictable working pattern.
124. Limited documentation was provided in support of their claim and Mrs Taylor disclosed heavily redacted bank statements of her business account held under the company name of 'SRT Travel Limited' and which only referred to transactions involving her payments relating to taxi work during the period of January 2022 to August 2023, (pp530-543). Regular payments were received from 'ABC Taxis (NW) Ltd ABC' and paid out in much smaller amounts to Mr and Mrs Taylor ('ROBERTA TAYLOR robbie wage' or 'r a taylor' wage), (e.g. p532).
125. Mrs Taylor explained that these payments related to settle and when asked by me why it was described as 'wages', she suggested it was because of laziness on her part and she may have used this term once and failed to amend it later. She said that the ABC Taxis NW payments related to the school contract work, and which were paid by the local authority and did not involve cash payments. She added that she would sometimes work as an escort on school transport runs where children were collected from home and taken to their school.
126. Mrs Taylor said that while it may have looked like a lot of money was being paid in by ABC Taxis NW, she had to pay out considerable sums for taxi operator settle, towards her car settle for the use of a vehicle and towards diesel to run the car. She said she was effectively 'breaking even'. Her husband she said saved some money by buying a car rather than paying car settle to rent one, but she could not afford to do so. However, she was emphatic that she paid what she was required to do by HMRC, and she was not an employee of SRT Travel Limited. Although she argued in evidence that both she and her husband chose not to be employees, it was because of the level of expenditure that this would involve from gross receipts. She argued as well that the company could not sub contract as it did not hold an operators' or drivers' licence.

127. Mrs Taylor said that sometimes Mr Nicholls would act as operator covering night shifts and when he went to bed, would pass responsibility to ABC NW's office in Runcorn which she said was problematic because they were unfamiliar with Chester and the routes that she could reasonably be expected to work. She also expressed dissatisfaction in being often asked to work to cover for drivers who had not become available for work, even on her days off. She believed that because her husband and she were reliable, they were expected to offer cover. I accepted that both Mr and Mrs Taylor had a strong view that they wanted to help the company and did not want to let customers down.
128. Mr Taylor would work day shifts normally and explained that neither Mrs Taylor nor he could subcontract taxi work that was offered to them because the AutoCab system prevented this happening. Any work which was offered and declined, would be returned to the operators for reallocation. He also believed that he was working for ABC Chester through ABC NW's operator's licence from 12 November 2021. Although he referred to speaking with Miss Barron about workplace issues, he suggested that Mr Nicholls was overall manager.
129. Like Mrs Taylor, he believed he worked on a regular basis, but argued that he had limited time off and when he was not working, he would be asked to cover for drivers who didn't turn up. Although he did not expressly state that he was required to accept these requests, he believed that the core of regular drivers was frequently called to provide cover. This made him feel guilty if he turned work down. He believed his wife to be more financially astute than he was. He said that when taking fares, he had to charge in accordance with the automated meter and he could not turn the meter off as it was contrary to the training that he received as a taxi driver from CWAC. He also said that all of his work came through the office but that his fares would be paid cash in hand.
130. Mr Taylor was able to accept contract work for school transport which not only required a private hire licence, but also a contract identification badge issued by the local authority. For safeguarding reasons any substitutions of driver would need to be arranged with the operator as contract holder and CWAC. Payments would be made to the school transport drivers by the operator every two weeks or so. This situation, however, was consequential upon the relationship between CWAC and ABC NW. I was not provided with evidence which demonstrated this was translated into a parallel agreement between ABC NW and CWAC which required the drivers to give exclusive service and to not provide substitutes. Instead, as a self employed driver or as a driver employed by and supplied by SRT Travel, he could withdraw from the school contract without penalty. ABC NW would need to source an alternative driver for whom CWAC would approve and run the risk of penalty. I understood that this was not a penalty which would be passed onto the drivers and the economic reality in these circumstances was not evidenced as

being one where the drivers entered into a contractual relationship with ABC NW where they were subject to control by the company.

131. Both Mr and Mrs Taylor became unhappy with the work at ABC and the behaviour of Mr Nicholls and they resigned. They argue that they were not provided with written contracts or agreements.

132. While I understood the commitment that both Mr and Mrs Taylor had towards supporting their customers and their friends who worked for the ABC businesses, I could not agree that they had some sort of employment contract with any of the respondents. On balance, the long hours that they worked did not arise from a contractual obligation and no written contract was provided. Moreover, I concluded on balance that they were either employees of SRT Travel, or self employed. Due to their evidence being insufficiently clear, it is not possible to be more precise than that. Importantly however, they were not employed by any of the respondents. I also concluded that in the absence of convincing evidence to the contrary the company SRT Travel was incorporated because of their belief that it was tax efficient and any non cash payments received from taxi work were paid into the business account. However, this did result in them being supplied by SRT as an intermediary business to work for ABC at the material time.

133. I was not persuaded that the disclosed payments out of the account were anything other than wages. I concluded that expenses paid out such as settle were largely derived from cash in hand payments while working as taxi drivers. Alternatively, these payments were found within the unredacted sections of the company bank statements. Either way, I did not accept that it was credible that this company simply existed as a 'vessel' into which payments would be received and that these claimants were supplied by SRT to provide work to ABC NW. In the absence of evidence to the contrary, this situation applied to both the claimants work as private hire taxi drivers and also when working on school contracts for ABC NW as driver/escort.

134. In terms of who the fourth and fifth claimants engaged with for the purpose of receiving work, the receipts in the bank account persuaded me that this was exclusively from ABC NW and there was no evidence that ABC Chester provided any payments for the work that was carried out.

Law

Employment status

135. The statutory definition of employees and workers can be found at section 230 of the Employment Rights Act 1996 as follows:

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

(2) *In 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.

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

(5) *In this Act 'employment'—*

- (a) *in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and*
- (b) *in relation to a worker, means employment under his contract;*

and 'employed' shall be construed accordingly.

[...]"

Employees

136. In Ready Mixed Concrete South East v. Minister of Pensions and National Insurance [1968] 2 QB 497 at p515, McKenna J formulated the following test for deciding whether or not there was a contract of service:

"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."

Worker

137. Some working arrangements are casual and there may be no obligation on the employer to provide work, or no obligation on the alleged worker to accept offers of work. In those circumstances, the question often arises whether the individual is a worker within section 230(3)(b) whilst actually working. Account should be taken of the absence of mutual obligations between assignments as a factor which may point towards the individual being in business on their own account. But the Tribunal should also recognise that other factors which may point towards worker status, even if there was an express contractual right to refuse offers of work.
138. Pimlico Plumbers Ltd v. Smith [2017] EWCA Civ 51 was a case which reached the Supreme Court and where it was held that plumbers working for Pimlico were workers.
139. Uber BV v. Aslam [2021] UKSC 5 was a Supreme Court decision dealing with the employment status of taxi drivers working for Uber. Ascertaining whether a person comes within section 230(3) is a question of statutory interpretation rather than contractual interpretation and the Tribunal must look at the reality of the working relationship.

Case Law

Respondent's submissions

140. Mr Chiffers referred to the following cases in his final submissions, some of which have been referred to by me above:
- a) Ready Mix Concrete (South East) Limited v Minister of Pensions and National Insurance [1968] 2 QB 497, (see above – guidance concerning the factors to consider when considering whether a contract of employment exists or not).
 - b) Carmichael v National Power plc [1999] 1 WLR 2042 – there was no written agreement between the parties. A Tribunal should look at relevant factors to determine status including who fixed the remuneration rate, what other terms were imposed and by whom, was one party working under the control of another, who provided the equipment and technology and who collected the fees.
 - c) Uber BV v Aslam [2021] UKSC 5, (see above)
 - d) Mr F Eque v Alpha Cars (Liverpool) Limited & others (Case No: 2405855/2020), decided by Judge Robinson on 4 October 2021. Another taxi case where it was decided that the claimant was neither a worker or an employee of any of the respondents. This was a Liverpool Employment Tribunal case and not a binding decision upon this Tribunal because it was not made by a higher Tribunal or Court. However, by way of background,

the claimant was a driver with the first respondent and Judge Robinson considered the claimant to be self employed. The decision has been delayed awaiting the decision in the Uber case (see above). Mr Egure operated within the Sefton MBC area of the Liverpool City Region, and they were the relevant licensing authority. Paragraph 33 of Judge Robinson's decision provides 18 points explaining why the claimant was self employed. However, the decision was made based upon the facts that applied to Mr Egure and it is not necessary to consider this case in any more detail.

Claimant's submissions

141. Mrs Hughes referred to the following cases in her final submissions and they are included below, (insofar as they were relevant to the preliminary issue):
142. Uber BV (see above) – paragraph 30 which was a description of the licensing regime that exists in the London area, and which essentially identifies the requirement for a licence for private hire drivers, their vehicles and for the operators.
143. Clyde & Co LLP & another v Bates Van Winklehof 2014 UKSC 32 – referred to in the Uber case and the need to apply the relevant words of the statute to the facts of the individual case, viewing the facts reasonably while keeping in mind the purpose of the legislation.
144. Shafquat Shah & Samuel Adeji v United Travel Group t/a Bounds Taxis (case nos: 3319522/2019 & 3319596/2019 - paragraphs 63 and 72. This was a decision of Judge Postle in the Employment Tribunals and the paragraphs in question deal with the obligation taxi drivers were placed under while logged onto the iCabbie system and that paying rental of £175 per week required them to provide their services on a regular basis. Judge Postle concluded that the degree of control exercised by the respondent taxi company amounted to realities making them workers. However, this case was a first tier Employment Tribunal and while factually of interest and relevant, like Egure above, it is not a binding decision and clearly relates to the facts specific to the parties in Shah.
145. Mrs Hughes also referred to her own claim brought in this Tribunal under case number 2418209/2020 which was heard by Judge Horne (as he then was) and where he determined that she was a worker with the first respondent Vedamain Limited within the meaning of section 230(3) ERA and reg 2(1) of WTR 1998. Again, this was a non binding decision upon this Tribunal being a judgment from another Employment Tribunal not a higher Tribunal or Court.

146. Egure v Alpha Cars (Liverpool) Ltd & others, (see citation and comment above).

Respondent's submissions

147. Mr Chiffers began his submissions by reminding me that I had to consider the two questions of:
- a) Whether the claimants were employed, were workers or self-employed?
 - b) If the claimants were employees or workers, the correct identity of the respondent who engaged them.
148. He asserted that all of the claimants were self-employed.
149. He also reminded me that the burden of proof meant the 'onus' was upon the claimant and the Tribunal had to evaluate whether their version of events was true and if so, consider the nature of the relationship between the claimants and the respondents.
150. He believed that the Employment Tribunal decision in Egure (above), was relevant to this case and in particular, paragraph 33 of the decision of Judge Robinson as it describes similar features to those that were relevant in this case.
151. In relation to the first claimant (Barron), he stated that her arrangements were not clear with regards to notice periods, salary and shares. He said that the message sent on 16 September 2021 by the first claimant to Mr Nicholls was important because she expressly referred to them having equal shares in the business, (p442). He also believed that she exercised autonomy as an owner of the business and referred to the first claimant's message sent referring to a unilateral increase in the settle to be paid by drivers was evidence of that.
152. He also added that the first claimant had no obligation to work, but if it was determined that she was a worker, it must be with ABC Chester as she had never worked in the Runcorn office of ABC NW or for that business. He argued that any issues relating to the licence arrangements was not connected with employment matters.
153. In relation to the second claimant (Hood), he said that her claim had similar flaws to that of the first claimant. She was unable to identify a contract which specified hours, identified contractual obligations, and involving working for low levels of pay below the minimum wage. She had autonomy and could arrange shifts herself, she worked expecting a share of the profits and she had no connection with the Runcorn business operated by Chester NW.

154. In relation to the third claimant (Nixon), he said that he was a self-employed contractor. He chose his own hours, had his own notice period, could refuse jobs and while he could not transfer jobs, he was in no different a place than any other taxi driver. He accepted in evidence that he could deviate from the fare sheet and had the commercial incentive of working free of settle.
155. Insofar as the fourth and fifth claimants (Mr & Mrs Taylor) were concerned, Mr Chiffers submitted that they were in the same position as the third claimant but additionally, operated through a limited company.
156. He asserted that the fourth claimant was not credible in that she was paying herself a salary from the company which was inconsistent with employment status.
157. While both felt morally obliged to support the business they were working in, Mr Chiffers submitted that this was of no relevance when determining the question of employment status.
158. In terms of the third, fourth and fifth respondents, he said it was regrettable that had remained in the proceedings as there was no evidence that that had ever employed any of the respondents.

Claimant's submissions

159. Mrs Hughes' provided detailed lengthy submissions in writing and supported them with oral submissions in reply to Mr Chiffers.
160. She began by observing that there was no evidence that ABC Chester operated until amended accounts were submitted to Companies House in 2024. Based upon Mr Dewhurst's evidence, she said that he was a director of ABC Chester and disputed that both he and ABC NW were simply aiding the other company. She referred to his regional involvement having licences with other local authorities neighbouring Chester such as Liverpool, Halton and Flintshire.
161. As a taxi operator, she said that he was responsible for all staff and drivers and their terms and conditions. She referred to the question of settle being paid by drivers to access operators' services, and this resulted in a mutuality of obligation.
162. She acknowledged that the first claimant did work for hours below the rate required by the National Minimum Wage but argued that the only way that it could legally be done, was to offer her shares instead and that the Department for Work and Pensions (DWP), had said that this was lawful.

163. When referring to the third, fourth and fifth claimant drivers, she said that they could not make a substitution and a driver could not accept work from another driver unless they held an operator's licence.
164. In terms of the role of ABC Chester, she submitted that it was created as a means of avoiding paying business rates on the premises and she referred to Mr Nicholls' message sent to Miss Barron on 16 September 2021, (pp442-3). Her argument was that it was never established as a business to trade and operate.
165. Consequently, she argued that it was ABC NW who were trading as a taxi business and this was demonstrated by their name being used on invoices, wage slips, company clothing, they were responsible for hiring any equipment and their name was used exclusively on the AutoCab system.
166. It was disputed that at any stage, Miss Barron was a co-owner of ABC Chester and both she and Ms Hood received payslips. They were expected to work personally as operators.
167. Ultimately, she focused upon the lack of control on the part of the claimants as operators or drivers, there was limited flexibility and they had to work regular hours.

Discussion

First claimant (Miss Barron)

168. Section 230(1) of the Employment Rights Act 1996 expects an employee to have entered into or work under a contract of employment. Section (2) describes a 'contract of employment' as being a contract of service. It can be express or implied, and if express, it can be agreed either orally or in writing.
169. I referred to the case of Ready Mixed Concrete above and McKenna test when considering the existence of a contract of service:
- "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."*

170. I did question whether there was any evidence of a contractual arrangement between Miss Barron and the respondents. There was clearly a regulatory framework for licensing between CWAC and ABC Taxis NW Limited who were operating from an address in Brook Street Chester. This address was also recorded as the registered office for ABC Taxis Chester Limited. While the existence of the regulatory framework for licensing did not amount to a contract between Miss Barron and any of the respondents sufficient to meet the test within section 230, it provided evidence of where any contractual working relationship might lay. She was after all, an operator working for a taxi business and her services were utilised to allow the business to fulfil its purpose. This was of course the supply of taxis and drivers arising from requests made by customers and providing them with transport from one location to another.
171. What was curious was the way in which Miss Barron began her work for ABC Chester and the guise under which the business initially operated, at least until ABC Taxis Chester Limited was incorporated in September 2021. No written contract of employment was available for Miss Barron's role as an operator with ABC Chester when the business launched in July 2020. No ancillary documents were provided for this period either nor even a copy of the operators' licence which was used from July 2020 until the ABC NW licence was issued by CWAC on 30 April 2021. Instead, I was required to consider the vague written and oral witness evidence and limited relevant documentation, including a series of messages sent during the first few weeks of ABC Chester's operation. It was however, her case to prove and she did not provide convincing evidence of any employment relationship in the early period of the business.
172. I concluded that Miss Barron was an experienced taxi operator with many years working in the industry and with family members who had also been involved with the taxi trade. She knew Mr Nicholls and in the Spring of 2020 it was she who wanted to launch a new taxi business in Chester. Commendably, she wanted the new business to retain the old values that she believed was typical within the taxi industry before KingKabs became dominant. She was passionate about having a '*family*' of operators and drivers whom she had known for many years and who would all work together. At this stage, Mr. Nicholls was working for ABC NW and was able to get some support from Mr Dewhurst so that the new business could use ABC NW equipment and systems and, in all likelihood, their operators' licence, (although it is not clear how another business could use ABC NW's licence given that it was not supposed to be transferrable).
173. I accepted Mr Dewhurst's evidence that he was sceptical about the prospects of the new business and while he would provide assistance, he had no intention upon its inception of running the business under the ABC NW umbrella. However, on balance, I concluded that the economic reality of this situation developed over time. In any event, when the business launched in

July 2020, I concluded that Mr Nicholls and Miss Barron behaved and operated as partners in an unincorporated business and where no contract for services was provided by Miss Barron to Mr Nicholls or ABC Chester.

174. This was evidenced by the way in which they operated initially, and Miss Barron was involved with the meetings with Mr Dewhurst when Mr Nicholls and her were seeking support. Both she and Mr Nicholls applied their respective skills to the management of the new business. Initially it appeared that its operation was somewhat amateurish, although this conclusion is reached based upon the limited contemporaneous documentation available for the initial period of activity and possibly because the business was launched during the height of the Covid pandemic.
175. Mr Nixon was the first driver recruited with an agreement that he would not have to pay any settle. It was not clear how much money was coming in from settle from drivers, but it was usually paid in cash and placed in a tin in the office, which Miss Barron had access to. A handwritten list of drivers who had paid (or not paid) their settle was used by the business and cashflow was undoubtedly an issue. What salary was taken was informal at this stage and involved cash being taken from the settle tin, which was far from ideal when future questions of auditing would be a considered. I accepted that the question of shares was something which was discussed mutually as a means of justifying the low wages that both Mr Nicholls and Miss Barron appeared to receive at this time. Initially, there was not an office available and both Mr Nicholls and Miss Barron would operate from their respective houses. The operating systems were problematic at first and Mr Nicholls had to frequently seek assistance from ABC NW.
176. As I have already mentioned above, Miss Barron is clearly passionate about the taxi industry. She has a history of being frustrated by the consolidation of the taxi industry in recent years and it is understandable that she was keen to reinvigorate the older model of small companies operated by local drivers. The difficulty was that over time, this passion was capable of being exploited or at least treated with some contempt by those whom she was working with. It may be that Miss Barron had become worried about incorporation and becoming a director, but whatever the reasons, as time progressed, Mr Nicholls and Mr Dewhurst wanted to formalise the ABC taxi business in Chester. From September 2021, the nature of the business for Miss Barron began to change.
177. By April 2021, ABC Taxis NW Limited were registered to operate from the new Chester premises in Brook Street. The licence clearly identified this company as the trading name and no reference was made to ABC Chester. It is not clear precisely why Mr Nicholls and Mr Dewhurst decided to establish ABC Taxis Chester Ltd, but it was registered at the Brook Street address and on balance, I accepted the consensus that it served as a means of avoiding or

reducing the payment of business rates, even if the precise mechanism or provision was not explained during the hearing.

178. Whatever arguments were subsequently raised by the respondents concerning the role that ABC Chester played (in its incorporated form), I could only conclude that it was a dormant company. What accounts were used described it as such and recorded that it had no employees. The attempts to strike it off the register demonstrated its purpose only related to the occupation of the Brook Street office and once ABC NW moved the operators to Runcorn, it ceased to be relevant.
179. While Mr Nicholls and Mr Dewhurst were considering incorporation, Miss Barron retained an influential role in the business providing guidance relating to the engagement of drivers and recruiting at least one operator, who was Ms Hood. Miss Barron was also handling money in the office, paying staff received from the settle and also paying her own wages. It was informal but demonstrated a great degree of control on her part. While she tended to work regular hours during evenings, she decided when she would take time off and swap with other operators as appropriate. An example of this is when she decided to take Father's Day off in 2023 and in an exchange with Mr Nicholls reminded him that she always takes that day as leave.
180. I will deal with the question of pay below but I concluded that there was no clear evidence that Miss Barron agreed to work and be subject to the control of Mr Nicholls, Mr Dewhurst or one of the two companies either implicitly or expressly. This combined with the absence of evidence of other provisions consistent with there being a contract of service, I am unable to accept that Miss Barron was engaged under such a contract.
181. Turning to the question of whether Miss Barron was a worker, section 230(3)(b) requires there to be a contract. It doesn't have to be in writing but there must be a contractual arrangement between the claimant and a respondent for her to be a worker under section 230(3)(b). Considering the findings of fact and the discussion already taken place in relation to employment status above, this is a matter which requires further consideration.
182. In terms of the initial period of the working relationship which began in July 2020, I was unable to accept that Miss Barron was a worker. I have already explained that I believed that the ABC Chester effectively commenced as a partnership. ABC Chester was yet to be incorporated and there was insufficient evidence to persuade me that ABC NW were operating the business. At the beginning in July 2020, there was no agreement that Miss Barron had entered into a contract, whereby she would work personally any work or services for any of the respondents. At this point I concluded that Miss Barron had agreed to work on an equal basis with Mr Nicholls either expressly or impliedly, with informal pay arrangements and an understanding

that eventually equal shares whether as a limited company or otherwise would be achieved.

183. This position continued until September 2021 when Miss Barron discovered the incorporation of ABC Taxis Chester Limited without her knowledge and where the directors were Mr Nicholls and Mr Dewhurst and where the shares were divided equally between them.
184. As was discussed within the findings of fact above concerning the shared messages, Miss Barron's relationship with Mr Nicholls began to unravel and she began to acquiesce to a different working pattern. It did not happen overnight. Indeed, the nature of this case is such that it is difficult to be precise as to when the employment relationship changed and crystallised between the relevant parties.
185. Considering the available facts and evidence however, I concluded that by the time that she requested that she be placed on the ABC NW payroll, Miss Barron was effectively agreeing that her status had changed and that she was providing her own work and skill as an operator in return for clearly recorded remuneration. What limited evidence was available also showed that during this period Miss Barron began to work in such a way that Mr Nicholls was seen as the overall manager at ABC Chester and this could be seen from the various messages available within the bundle and the way in which a meeting took place with taxi drivers in June 2023 regarding the move of operators work to Runcorn, without her knowing.
186. Consequently, I determined that Miss Barron was engaged as a worker by ABC NW from 2 May 2022 when she was formally added to their payroll and in the absence of evidence to the contrary, it was they who employed her as a worker from this date until her engagement ended the next summer in 2023. They held the relevant operators' licence, they managed the payroll and none of the other respondents assumed the role of employer in the way that ABC NW did.

2nd Claimant – Ms Hood

187. Miss Hood was engaged to work as an operator by Miss Baron carrying out the same sort of work that she did as an operator with her work commencing on 21 September 2021.
188. I was supplied with limited documentary evidence concerning what agreement was in place between her and ABC, although I accepted that she did not have the same expectation of partnership as Miss Barron when she began working there, even if there had been some vague discussions taking place. I accepted that she did tolerate the low pay for the first few months, and this related to a belief that things would improve and her general happiness to be working with former colleagues again with whom she felt very

attached and close. Her working relationship appeared informal during this initial period in terms of shifts and pay and when she was required to work. This did not continue however, and by 12 April 2022, she was messaging Mr Nicholl seeking a rise to cover working extra shifts.

189. Unlike Miss Barron, I concluded that she was recruited to fulfil a particular need for operators working for ABC and working within the Chester area. She was not involved in the creation of the business. The limited documentation and witness evidence describing the elements of the working relationship is not helpful, but I was persuaded that from 21 September 2021, she was engaged as an operator. She did work shifts but they did not involve a clear working week. There did not appear to be set hours, but through negotiation with other operators and Mr Nicholls, an agreed working pattern would be identified. Unlike Miss Barron in this earlier period, I did not accept that Ms Hood had the same freedom as to when and how she worked and did not handle money or authorise payments like she did. When working, she had limited opportunities for breaks. But during this initial period, Ms Hood was unable to demonstrate convincingly the degree of control that she had surrendered to ABC and it was not clear what her working status was.
190. There was insufficient evidence available for me to conclude that she operated under a contract of employment and was therefore not an employee. Formal documentation of pay only became available from 2 May 2022 when she was added to the ABC NW pay roll. However, based upon the available facts regarding the way she worked, I concluded that Ms Hood was engaged as a worker by ABC NW, on whose payroll she had been placed from 2 May 2022. From this point she clearly agreed to work for regular and recorded remuneration in return for working regular hours agreed and set with Mr Nicholls on behalf of ABC NW. As I explained in relation to Miss Barron, the greater control exercised by Mr Nicholls and ABC NW became more obvious on balance, based upon the limited evidence available.
191. While I did accept Ms Hood was engaged as an operator prior to 2 May 2022, but her status was unclear during her initial period of engagement from September 2021 until 1 May 2022. I was therefore unable to accept that she was properly engaged in her role as a worker until 2 May 2022. From that date, she was formally paid on the ABC NW payroll, there was a clear employer/worker relationship, and this continued until her employment ended.

3rd Claimant – Mr Nixon

192. Mr. Nixon's evidence was largely credible in relation to his role as a taxi driver. Indeed, it did not actually assist him in demonstrating that he was employed either as an employee or a worker. He operated as a private hire taxi driver and accepted that there was minimal control exercised by either ABC Chester or ABC NW regarding the times when he would log on to work and whether he could accept business or not. If he chose not to work, he

would not nominate a substitute, but other private hire drivers on the ABC Chester messaging group would be asked if they were free by Mr Nicholls. Essentially, he fulfilled the role of a traditional private hire driver who operated as a self-employed person. Mr Nixon was registered as self-employed with HMRC and pays his own tax and national insurance.

193. Mr Nixon did not pay any settle to ABC Chester by agreement, whether to Miss Barron or anyone else and he therefore did not even have the pressure to work in the same way that other drivers had to do, to cover a weekly settle figure. He had a discretion whether to accept work offered to him and would not be penalised for not doing so. He was not subject to scrutiny in terms of journey times or routes and the only expectation was that he would charge from the fare sheet that applied to drivers.
194. Mr Nixon accepted account work and would be paid by ABC, but there was no obligation for him to do so. No notice was required when deciding to come on shift and there is evidence of WhatsApp or SMS text messages where Mr Nicholls puts out a general message to drivers asking who will working that night, (*'who is coming out to play?'* as he would often put it). He was not subject to notice or penalties concerning any decision to cease working for ABC.
195. His taxi driver badge was with CWAC and not Halton Council and therefore his work would be with the Chester based ABC operation and his only involvement with Runcorn was when the operators in Chester finished for the night and the system moved from there to Runcorn. For reasons given above, he may have been working out of ABC Chester's office, but he was engaged by ABC NW.
196. Ultimately, my decision concerning employment status is one based on the relevant facts in this case. There was no evidence before me that Mr Nixon was required to work personally for ABC NW for a minimum period each week and when working on fares supplied by the operator, he had a significant amount of latitude concerning how and when he worked. It was a very loose arrangement and there was simply no agreement between the parties whether written or verbal that once a driver became available to work, they had to accept what was offered and complete a minimum number of hours. They could pause and have breaks when they wanted to, and this was not a case involving a taxi company which tightly regulated those drivers working for them.
197. Consequently, my conclusion is that the third claimant Mr Nixon was at all material times a self employed driver and was not an employee or worker of ABC NW or indeed any other respondent in these proceedings.

4th and 5th claimants - Mrs Taylor and Mr Taylor

198. In relation to Mrs and Mr Taylor I concluded that they had decided (albeit with the advice of an accountant or financial advisor), that it would be more tax efficient to take work using a company which was a general travel company but through which invoices would be paid. This was primarily for the school contract work which they undertook, and which was accepted by both sides to have been paid by ABC NW. Both accepted that they would get cash in hand payments for work carried out as normal private hire drivers, but this was money that was generated as part of their travel company, and they did not have separate written or oral contracts with either ABC Chester or ABC NW in relation to the work they carried out as private hire drivers.
199. In many respects they operated in the same way that Mr Nixon other than that they operated through a limited company, and this would have been the business through which their income arose. It also served to distance them from ABC as the company was an intermediary business supplying them as drivers. It is understood that they both had to pay settle, but that was simply a payment in exchange for accessing operator services and the supply of fares. ABC marketed themselves as having lower settle rates than competitors, so in relative terms, they were not placing an unduly onerous burden on drivers.
200. Mrs and Mr Taylor may have been helpful and offered to work for ABC when they knew the business was struggling to have enough drivers on the road, but that arose from a sense of personal duty to friends rather than as an obligation from any contractual arrangement between them as drivers and one or more respondents as operators. They may well have got better fares for being reliable in turning up for work regularly, but this arose from personal choice rather than any pressure from management.
201. There was some documentation provided and there was an attempt by Mrs Taylor to argue that the company was not used in relation to the work carried out for ABC. However, I concluded that it was based upon the heavy redaction of the company bank statements provided. The absence of any other convincing documents together with their relatively brief witness statements meant that I was not persuaded they were operating separately as individuals with a contract of employment either verbally or in writing with ABC NW.
202. For this reason, I do not accept that they were employees or workers as they did not satisfy the requirements of section 230 ERA in respect of either category. They operated through their own company and were supplied by SRT Travel as drivers. But essentially, they were either self employed drivers or employees of SRT, it matters not for the purposes of the issues in this case. What is important is that they did not operate under a formal contract as individuals with ABC NW in return for agreed remuneration. ABC NW held no control over their activities who had entered into a contract with SRT Travel and paid the fourth and fifth claimants through this company.

Note concerning the identity of the potential employer

203. In relation to the question of who would have been the employer engaging the claimants it may well have been that the ultimate intention of the individual respondents and other directors that ABC Taxis Chester Limited would be a standalone company competing against KingKabs and other large taxi businesses in the Chester area. It may well have been the intention that this would be run by Mr Nicholls and potentially even Miss Baron. However taking into account the way in which negotiations took place through the regulatory framework with CWAC, and the way in which invoices were paid at the time to which this case relates, I concluded that ABC Chester simply served as an entity for matters relating to the building the ABC businesses occupied, such as council tax and the payment of utilities etc'. In terms of the actual business of operating a taxi company, CWAC engaged solely with ABC NW. They not only agreed to their being the operator licence holder but also the trading name operating from Brook Street in Chester. ABC was a generic name used by companies in the region involving Mr Dewhurst and Mr Jordan Roberts.
204. Mr. Dewhurst's evidence regarding his predictions about the prospects of a taxi business operating in the Chester area were reasonable. He clearly wanted to help Mr Nicholls (and initially Miss Barron) and was willing to assist in the formative stages of the ABC Chester business. However, at no stage was a point reached where ABC Chester began to operate under its own licence and as a separate business. For these reasons I concluded that any engagement with operators and drivers were with ABC NW and this was evidenced by the invoices and pay slips which were produced by this company.
205. While ABC Chester was asserted as the actual employer and Mr Dewhurst and Mr Nicholls were included as potential employers by Judge Batten (because of concerns regarding ABC Chester being a dormant company), none of these three respondents assumed the role of effective employer at any stage.

Conclusion

206. This was a case which was made more difficult because of the limited relevant documentary evidence and the poorly prepared witness statements which did not focus upon the issues. While I did adopt a broad brush approach to the evidence that I heard, it remained that the claimants had to prove their case and demonstrate a clear employment relationship which was sufficiently persuasive for me to identify employee or worker status.
207. However, by adopting the chronology of events and applying the evidence to the timeline, it has been possible to identify on balance of

probabilities what employment arrangements existed and who was responsible for engaging the claimants.

208. Accordingly, the judgment of the Tribunal is as follows:

First and second claimants

- (11) The first claimant was not an employee with any of the respondents at the material time in accordance with the definition provided by section 230 Employment Rights Act 1996.
- (12) The first claimant was a worker with the second respondent 'ABC Taxis NW Limited' from 2 May 2022 in accordance with section 230 Employment Rights Act 1996.
- (13) The second claimant was not an employee with any of the respondents at the material time in accordance with the definition provided by section 230 Employment Rights Act 1996.
- (14) The first claimant was a worker with the second respondent 'ABC Taxis NW Limited' from 2 May 2022 in accordance with section 230 Employment Rights Act 1996.

Third, Fourth and Fifth claimants

- (15) The third claimant was not an employee nor was he a worker with any of the respondents within the meanings provided by section 230 Employment Rights Act 1996. This is because the third claimant was self employed at the material time.
- (16) The fourth claimant was not an employee nor was she a worker with any of the respondents within the meanings provided by section 230 Employment Rights Act 1996. This is because the fourth claimant was self employed at the material time.
- (17) The fifth claimant was not an employee nor was he a worker with any of the respondents within the meanings provided by section 230 Employment Rights Act 1996. This is because the fifth claimant was self employed at the material time.

Consequences of the judgment concerning employment status and employer identity

- (18) The claims involving the first and second claimants will now be discussed at a further preliminary hearing case management on date to be confirmed. At this hearing, those claims which permit complaints to be raised by those with worker status will be subject to a final list of issues, listing for a final hearing and the making of appropriate case management orders.

- (19) The first and second claimants' complaints of unfair dismissal and redundancy payment (Parts X and XI Employment Rights Act 1996), are dismissed because they can only be brought by employees and not workers.
- (20) The third, fourth and fifth claimants' claims are dismissed because they are not employees or workers, and the Tribunal does not therefore have jurisdiction to hear these claims as they were self employed at the material time.

Employment Judge

Date 14 August 2025

JUDGMENT SENT TO THE PARTIES ON

Date: 6 October 2025

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

**ANNEX TO RESERVED JUDGMENT AND REASONS FOR THE PRELIMINARY
ISSUES**

CHRONOLOGY OF EVENTS

July 2020	The first claimant proposes setting up a Chester based taxi business in a meeting with the fourth respondent.
3 July 2020	The first claimant begins working with the fourth respondent in a business known as ABC Chester
3 July 2020	The third claimant begins working as a taxi driver for ABC Chester and agreed that he keeps the entirety of his income from fares and does not have to pay settle to the taxi business.

15 July 2020	The fourth and fifth claimants incorporate SRT Travel Limited and are appointed as directors from this date.
30 April 2021	CWAC Licensing authority issues taxi operators' licence to ABC Taxis NW Limited using the same identity as its trading name. No reference to ABC Chester whether as a company or unincorporated business. Licence is valid until 29 April 2026.
13 July 2021	ABC Taxis Chester Limited (co no: 13509377) is incorporated and the third and fourth respondents are appointed as directors from this date, (p373).
18 October 2021	Fourth claimant begins working with ABC Chester as taxi driver being supplied by SRT Travel.
12 November 2021	Fifth claimant begins working with ABC Chester as taxi driver being supplied by SRT Travel.
March/April 2022	First and Second claimants request to go on the payroll of ABC Chester.
2 May 2022	ABC Taxis NW Limited place the first and second claimants on their payroll.
25 June 2023	First claimant walks out of workplace at ABC Chester
28 June 2023	Third claimant stops working as driver for ABC Chester
29 June 2023	Fourth claimant stops working as driver for ABC Chester
12 July 2023	Fifth claimant stops working as driver for ABC Chester
15 August 2023	First claimant sends letter saying she is resigning
18 September 2023	Third, Fourth and Fifth claimants notify ACAS of potential claim (Date A)
19 September 2023	SRT Travel dissolved and Fourth and Fifth claimants cease to be directors of the company
17 October 2023	Third, Fourth and Fifth claimants receive early conciliation certificate from ACAS (Date B)
26 October 2023	First and second claimants notify ACAS of potential claim (Date A)

27 October 2023	First and second claimants receive early conciliation certificate (Date B)
28 October 2023	Claim form presented (first and second claimants)
28 October 2023	Claim form presented (third, fourth and fifth claimants)
19 December 2023	Response received from first respondent (third, fourth and fifth claimants)
19 December 2023	Response received from second respondent (third, fourth and fifth claimants)
10 June 2024	Preliminary Hearing Case Management before Judge Batten – third and fourth respondents added to the claim.
15 August 2024	Judge Leach records that the responses presented by the third and fourth respondents are out of time.