



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hussey

Respondent: Signature Medical Limited

Heard at: Manchester (by Cloud Video Platform) On: 9 July 2025 and
9 September 2025 (in chambers)

Before: Employment Judge Shotter

Appearances

For the claimant: In person
For the respondent: Ms R Morgan, counsel

RESERVED JUDGMENT

The judgment of the Tribunal is:

The Tribunal does not have the jurisdiction to consider the claimant's claim as it did not arise and nor was it outstanding on the termination of employment for the purposes of article 4 (c) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, and the claimant's claim is dismissed.

REASONS

Preamble

- (1) This was a remote public final hearing by video with the agreement of the parties which followed a case management preliminary hearing held on the 3 March 2025.

RESERVED

The hearing finished at 16.39 and I did not have sufficient time to deliberate and give oral reasons and judgment.

- (2) I had before me a partly agreed bundle (a number of documents were disputed by the claimant) consisting of 158-pages, a supplementary bundle provided by the claimant and written witness statements from the claimant signed and dated 6 June 2025, Kieron Ellis, director of the respondent, who gave oral evidence on the respondent's behalf and Roskana Szewczyk, HR manager, who did not give oral evidence.

Agreed list of issues

- (3) Prior to the hearing starting I sent the parties a draft list of issues, which were approved as set out below:

1. Did this claim arise or was it outstanding when the claimant's employment ended? The claimant has confirmed (para 18 of the Case Management Summary) that he has been paid for commissions due on all surgery performed up to 11 November 2024. Does the claimant's claim for commission arise or was outstanding as at the effective date of termination or does it arise after termination of the claimant's employment?
2. The contractual clause relied on by both parties is set out in the contract dated 16 March 2023.
3. Did the respondent do the following:
 - (1) Fail to pay to the claimant up to 5% of the cost of completed surgery referred to the respondent by a referee recruited by the claimant to refer clients to the respondent, even if that surgery took place after the effective date of termination 11 November 2024?
4. Was that a breach of contract or did the commission payment arrangements end on termination of the employment relationship? Was the claimant entitled to commission in respect of surgery performed after the 11 November 2024 or was it a prospective right to payment of commission the claimant could not sue on until the right had matured i.e. the surgery had actually taken place? If the latter, does the Tribunal have the jurisdiction to consider the claimant's claim?
5. How much should the claimant be awarded as damages?
6. *[Any other remedy?]*

[Schedule A2 Trade Union & Labour Relations (Consolidation) Act 1992 cases]

7. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

RESERVED

8. Did the respondent or the claimant unreasonably fail to comply with it?
 9. Is it just and equitable to increase or decrease any award payable to the claimant?
 10. By what proportion, up to 25%?
- (4) Taking into account the written and oral evidence, I have made the following findings of facts resolving any conflicts in the evidence on the balance of probabilities.

The facts

- (5) The claimant was employed by the respondent as Head of Business Development from 16 March 2023 until 11 November 2024 when he was dismissed. The respondent is a provider of cosmetic surgery procedures, for example, facelifts. The claimant's role was to recruit people referred to as "referee" in the employment contract and "influencers" elsewhere, who could in turn refer potential customers to the respondent through social media and other means of communication. For the purpose of these proceedings I have referred to "referees/influencer".
- (6) On 04 December 2024, following ACAS early conciliation between 05 November 2024 and 04 December 2024, the claimant presented a breach of contract claim totalling £55,000 consisting of unpaid bonus. The claimant is aware that the jurisdiction of the Employment Tribunals, in relation to proceedings for breach of contract is limited to £25,000.

The contract of employment

- (7) The claimant was employed under a written contract of employment titled "Statement of Main Employment" which made provision for an annual salary of £30,000 and a further payment of "**Commission/bonus** *Commission - 12.5% of the cost of the surgery will be given as a bonus to be shared between the BDM and the referee, of that % the BDM can negotiate up to 5%.*" This was the only reference to a bonus payment and there were no express provisions referring to the bonus scheme ending as at the effective date of termination.
- (8) It is undisputed that the claimant could negotiate with individual referees/influencers their proportion of the commission. A referee/influencer could be a previous client of the respondent, a social media influencer, medical practitioner or a third party clinic and they would be signed up to a fixed-term three-year contract to refer patients to the respondent for surgery. In the bundle there were a number of contracts signed by the claimant on behalf of the respondent in his capacity as business development manager. The fact that the claimant signed the contract does not make him a party to it and contrary to the claimant's submissions, I find as a matter of fact the only parties to the fixed term

RESERVED

three year contract with referees was the respondent and the referee/influencer. The claimant was not a party and nor was he bound by the contractual terms including the three year fixed term.

- (9) Contrary to the claimant's understanding, the fixed-three year contract to refer patients to the respondent was exclusively between the respondent and the named party referred to as "the influencer." I shall refer this as "the marketing contract" to avoid any confusion between the claimant's contract of employment as they are entirely different contracts. There was no correlation or link between the claimant's contract of employment and the marketing contract entered into between the respondent and third party influencer. The fact the claimant may have negotiated the percentage commission before the marketing contract was entered in as part of his employment duties, and the referee/influencer may have signed up to a maximum three year contract did not mean the claimant was entitled to receive a percentage of the work the influencer generated for a set period of three years, and so I found as a matter of fact.
- (10) The marketing contract expressly provided "no other party shall be involved in this Agreement without the express permission by both Parties in writing." There was no evidence before me that the claimant was a party to any marketing contracts and I find that he was not. It also set out the following provisions;
- 10.1 Under para. 3.1 the marketing contract provided "This Agreement will continue from the start date with no fixed period and will remain until terminated by either party giving one month's notice in writing to the other party.
- 10.2 Under para. 3.2 the marketing contract provided "upon termination of the expiry of the notice period the Agreement and all terms shall no longer apply and the parties will have no obligations or liabilities to each other."
- (11) The marketing contract was clear that the referee/ influencer would invoice the respondent "every 30 days for the services the Agent completes." A code must be provided to the patient before the end of their consultation and payment would only be made for successful referrals. In other words, the treatment must have been carried out and paid for. Potential patients who could not afford to pay and did not take part in any treatment would not generate income for the respondent or a commission for the referee/influencer. Potential patients would not always generate income in the three year fixed period from the starting date of the marketing agreement, neither the influencer, claimant or respondent were in position to anticipate the success rate of patients taking up the treatment and paying for it, with the result that after the effective date of termination the claimant had no idea if any commission would be generated by referees/influencers due to uncertainty.

RESERVED

- (12) On the 11 October 2024 the claimant, who did not have 2 years continuous employment to bring a complaint of unfair dismissal, was notified his employment contract would be terminated due to business needs with his last working day being 11 October 2024. The effective date of termination was 11 November 2024 taking into account notice. Shortly after, the respondent stopped using referee/influencer discount codes and issued notice to referees/influencers terminating the marketing contracts on 30-days' notice as provided in the marketing agreement. The claimant has questioned the credibility of this evidence, producing documents in his supplementary bundle showing the respondent was still using "Exclusive Referral Discount." There is no need for me to determine credibility on this issue, given the respondent can bring the marketing agreements to an end on 30-days' notice as provided in the agreement, which is not in dispute. The claimant was not party to the agreement in any event, and he was not entitled to any payments generated by sales after the effective date of termination.
- (13) At the preliminary hearing the claimant accepted all commissions due to him for treatment completed during the course of his employment had been paid in full, and his claim is for commission generated after the effective date of termination. There is no need for me to go behind the claimant's case and calculate whether all commission payments have been made up to the effective date of termination.

Law

- (14) The Employment Tribunal's jurisdiction to determine breach of contract claims is espoused in Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. It provides jurisdiction where the claim relates to a term of the employment contract and arose or remained outstanding at the time of termination.

Submissions

- (15) The claimant was provided with a copy of the respondent's written submissions following which he made oral submissions. The claimant referred to foreign case law, which he withdrew, submitting that the contract of employment and marketing contract were "interlinked because our commission payments are part of a specific pot."
- (16) The claimant argued that the respondent's witnesses were employed after he entered into the employment contract and therefore they cannot comment on it or the ambiguity in the contract, which should be ruled in his favour. The claimant submitted "there is no clause to say my commission stops" and "I should still be earning money from the people I introduced into the business" because there is no termination clause.

RESERVED

- (17) The claimant submitted that his calculations as to how much he was due to be paid post termination of employment should be accepted on the basis that “because the respondent stopped paying or tracking a referral does not mean they should not be paying [me].” The claimant was not in a position to make any calculations with any certainty given the figures depended on future events.
- (18) At the end of making oral submissions my typed notes record the following “C confirming he has said everything he wants to say. There is case law around ambiguity and no clause to state my commission payments are not payable post termination.” The claimant did not say what that case law was.
- (19) Without leave of the Tribunal the claimant on his own volition submitted written submissions on the 17 July 2025 referring to a number of matters, including four cases;
1. *Wood v Capita Insurance 2017 UKSC 24*
 2. *Marshal (Cambridge)ltd v Hamblin (1994)*
 3. *Fentem v Outform EMEA Ltd (2020).*
 4. *O2 Czech Republic v QT (CJEU 2023)*
- (20) Before deciding whether to refer the claimant’s written submissions to the respondent for comment (which would only serve to increase the costs they have already incurred) and given the claimant confirmed at the hearing he had said everything he wanted to say, I have briefly read the case law quoted and taken the following view without hearing arguments as to their effect and whether the Tribunal is bound by *O2 Czech Republic v QT (CJEU 2023)*.
- (21) With reference to *Wood v Capita Insurance 2017 UKSC 24*: on a cursory reading this case deals with the question of contractual interpretation, it is not concerned with an employment contract and does not assist the claimant. It concerns an indemnity clause in an agreement dated 13 April 2010 (“the SPA”) for the sale and purchase of the entire issued share capital of a insurance company, when shortly after the sale the buyer discovered the company had misled customers, and agreed a compensation scheme with the FCA. The Supreme Court held dismissing the appeal, on true construction, the indemnity clause excluded compensation not deriving from claims and complaints.
- (22) With reference to *Marshal (Cambridge)ltd v Hamblin (1994)* ICR 962 this case was referred to in *Fentem v Outform EMEA Ltd* EA-2020-000851-BA and neither assist the claimant who is not bringing a wrongful dismissal claim for a payment in lieu of notice and there is no issue concerning whether the claimant was dismissed for the purpose of an unfair dismissal claim. The only claim brought by Mr Hussey is breach of contract as he did not have sufficient continuity to bring a

RESERVED

claim for unfair dismissal. HHJ Auerbach referred to *Marshal* in detail, including the conclusion that; “*There was no dismissal in this case. The Respondent resigned and within the terms of the contract the Appellants paid wages (but not commission) until the expiry of the notice. Insofar as such commission is contractually recoverable that is a matter which lies outside the jurisdiction of the Industrial Tribunal, the correct forum for such claims being the County Court.*” In Mr Hussey’s case he was paid salary and commission up to the date of termination.

- (23) *With reference to O2 Czech Republic v QT (CJEU 2023, on a cursory reading, this case concerns a sales agency and commissions that the agent loses. The claimant was not an agent. He was an employee until termination of his employment, following which he was not entitled to commission payments that had not arisen during the course of his employment. The claimant was not a self-employed commercial agent, the respondent was not his principal and the terms of the Commercial Agents (Council Directive) Regulations 1993 (SI 1993/3053) (as amended) ('the Regulations') implement Council Directive 86/653 [1986] OJ L382/17 ('the Directive') did not apply. This case did not assist the claimant.*
- (24) I accepted Ms Morgan’s submission that the claimant’s claim rests on hypothetical future earnings from patients who may or may not have undergone surgery post termination for which no contractual entitlement succeeds.
- (25) With reference to the first agreed issue, namely, did this claim arise or was it outstanding when the claimant’s employment ended, I found that it was not. The claimant accepted he has been paid for commission due on all surgery performed up to 11 November 2024. As the alleged breach relied on by the claimant was post-termination the Tribunal does not have the jurisdiction to consider the claim for a post termination breach of contract under Article 3 of the 1994 Order.
- (26) In the alternative, had the Tribunal jurisdiction (which for the avoidance of doubt it does not) I would have gone on to find there was no contractual entitlement to any post-termination commission.
- (27) The contractual clause relied on by both parties is set out in the contract dated 16 March 2023, and the claimant’s interpretation of that clause is that bonus was payable on completed surgeries after employment was terminated, and the Marketing Agreement entered between the respondent and referee/influencer should be interpreted in such a way so as to benefit the claimant for the fixed term period. The claimant’s case is that payment of his commission throughout the three year contract was the intended effect of the contractual provisions in his employment contract which should be interpreted in his favour given the respondent has failed to expressly set out a provision whereby termination of the employment contract would mean he was no longer entitled to commission post-

RESERVED

termination. For the reasons set out above I did not agree with the claimant's interpretation.

- (28) With reference to the second issue, namely, did the respondent fail to pay to the claimant up to 5% of the cost of completed surgery referred to the respondent by a referee recruited by the claimant to refer clients to the respondent, even if that surgery took place after the effective date of termination 11 November 2024, I find it did not and the claimant's claim would have been dismissed in the alternative. There was no breach of contract as the commission payment arrangements ended on the 11 November 2024. There was no prospective right to payment of commission for surgery that had actually taken place after the 11 November 2024.
- (29) In conclusion, the Tribunal does not have the jurisdiction to consider the claimant's claim as it did not arise and nor was it outstanding on the termination of employment for the purposes of article 4 (c) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, and the claimant's claim is dismissed.

Approved by:

Employment Judge Shotter
9 September 2025

RESERVED JUDGMENT & REASONS SENT
TO THE PARTIES ON:

16 October 2025

FOR THE TRIBUNAL OFFICE:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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