



# EMPLOYMENT TRIBUNALS

## London South Employment Tribunal

### 10 November 2025 (video)

**Claimants:** Velanie Freon Menezes [C1] and Mr Jills Kurian [C2]  
**Respondent:** IMC Locums Ltd  
**Before:** Judge M Aspinall (sitting alone as an Employment Judge)  
**Appearances:** Ms V Menezes, Claimant  
Mr J Kurian, Claimant  
Mr N Henry, Litigation Consultant for Respondent

## Judgment

**The judgment of the Tribunal** is that the Claimants were at all material times workers of the Respondent within the meaning of section 230(3)(b) of the Employment Rights Act 1996. The case will proceed to a final hearing to determine the substantive claims for unauthorised deductions from wages.

## Reasons

### BACKGROUND

1. The Claimants are both qualified audiologists who registered with the Respondent, a specialist healthcare recruitment agency. They were sourced by the Respondent to provide audiology services at Maidstone and Tunbridge Wells NHS Trust. Ms Menezes commenced her assignment on 29 April 2024, and Mr Kurian commenced on or around 1 May 2024.
2. The relationship was governed initially by written "Candidate Assignment Schedules" provided by the Respondent. These documents set out the assignment details, including an hourly rate, and contained standard terms referring to the Claimants as "contractors" and the rate as an "Umbrella Company – Gross Rate".
3. A dispute arose almost immediately regarding the rate of pay. The Claimants contended they had been verbally promised £28.00 per hour. They communicated this to Mr Garry Marshall, the Respondent's Divisional Therapies Lead, via WhatsApp. Mr Marshall acknowledged issues with the rate calculation in the written schedules and subsequently confirmed in writing that he had increased their rate to £28.00 per hour.
4. Despite these assurances, the Claimants received payslips showing lower hourly rates (variously £23.56 and £21.77). They also allege they were promised a £200 bonus to cover travel expenses to a different hospital site (Tunbridge Wells), which was not paid.
5. The Claimants raised formal grievances. The NHS Trust responded by explicitly stating they were not its employees and directing them back to the Respondent. The Respondent, in turn, maintained in its ET3 response that it was merely an intermediary agency and that the Claimants were directly engaged by the Maidstone and Tunbridge

Wells NHS Trust.

### **COMPLAINTS MADE IN THE CLAIM**

6. By claim forms presented on 25 July 2024, both Claimants brought complaints of unauthorised deductions from wages.
7. They allege that the Respondent failed to pay them at the agreed rate of £28.00 per hour for the duration of their assignments. They assert that the written contract rate of £26.40 was incorrect and was subsequently varied by an express oral and written agreement with Mr Marshall to the higher rate of £28.00.
8. Furthermore, they claim entitlement to a £200 bonus payment. They assert this was expressly promised by Mr Marshall in WhatsApp correspondence as compensation for the additional travel required to work at the Tunbridge Wells site, which had not been part of the initial assignment details, and for the initial confusion regarding their pay rates.
9. Mr Kurian initially included a complaint of detriment following a protected disclosure (whistleblowing). This complaint was formally withdrawn by email on 31 July 2025 and dismissed upon withdrawal in a previous Case Management Order.
10. The claims are resisted by the Respondent primarily on the basis of employment status. The Respondent contends it was not the employer or principal, but acts only as a framework agency introducing candidates to the NHS Trust for direct engagement.

### **ISSUES FOR DETERMINATION**

11. This preliminary hearing was listed solely to determine the employment status of the Claimants.
12. The Tribunal must decide whether, at the material times during their assignments at Maidstone and Tunbridge Wells NHS Trust, the Claimants were "employees" of the Respondent within the meaning of section 230(1) of the Employment Rights Act 1996.
13. In the alternative, the Tribunal must decide whether they were "workers" of the Respondent within the meaning of section 230(3)(b) of the same Act.
14. A finding on these issues is necessary to determine whether the Tribunal has jurisdiction to hear the substantive claims for unauthorised deductions from wages under section 13 of the Employment Rights Act 1996.

### **THE HEARING**

15. The hearing was conducted remotely by video. Both Claimants attended and represented themselves. Ms Menezes took the lead in making submissions on behalf of both Claimants. The Respondent was represented by Mr Henry.
16. I heard oral evidence from both Claimants, who adopted their written witness statements. For the Respondent, I heard evidence from Mr Luke Dyer, a Director of the company.
17. I was provided with a preliminary hearing bundle of 163 pages. In addition, a separate "witness statement bundle" of 167 pages was provided, which incorporated the separate bundles from each Claimant along with the witness statement of Mr Dyer. Although these documents were submitted late, in the interests of justice, and as neither party was prejudiced given the core documents were already known to them, I admitted this late evidence.

## THE LAW

18. Section 230 of the Employment Rights Act 1996 defines "employee" and "worker". An "employee" is an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. A "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
19. Section 230(3) defines a "worker" as an individual who has entered into or works 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.
20. The classic test for a contract of service (employment) derives from *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497, requiring: (i) personal service for remuneration; (ii) a sufficient degree of control by the putative employer; and (iii) other provisions consistent with a contract of service.
21. In determining the true nature of the relationship, particularly where standard form contracts are used, I must apply the principles in *Autoclenz Ltd v Belcher* [2011] UKSC 41. The Supreme Court held that tribunals should look beyond the written documentation if it does not reflect the reality of the agreement. The relative bargaining power of the parties must be considered, and the "true agreement" must be gleaned from all the circumstances.
22. I also considered *Uber BV v Aslam* [2021] UKSC 5, which emphasised that the statutory definitions should be viewed purposively, intended to protect vulnerable individuals in a subordinate position who cannot genuinely be described as independent businesses.
23. Regarding temporary agency workers, *McMeechan v Secretary of State for Employment* [1997] IRLR 353 establishes that a worker may have employee status for the specific duration of an assignment if the requisite mutuality and control exist within that assignment, even if no overarching contract exists between assignments.
24. I was also referred by Mr Henry to *Levy McCallum Ltd v Middleton* [2005] UKEAT 0020\_05\_0908, which reiterates the need to look at the overall picture of the relationship rather than just the labels the parties used. As HHJ Serota (as he then was) memorably observed, if parties agree to create a horse but instead create a camel, calling it a horse does not make it one.

## THE EVIDENCE

25. The Claimants gave clear and consistent evidence regarding their recruitment. They stated they negotiated solely with Mr Marshall at the Respondent agency. They insisted they had no direct contractual discussions with the NHS Trust and that Mr Marshall handled all queries regarding their rates, hours, and work locations. They provided WhatsApp screenshots showing Mr Marshall actively managing their concerns, promising to "speak to the staff bank" on their behalf, and personally confirming he had "increased" their rate to £28.00.
26. Mr Dyer maintained throughout his evidence that the Respondent was not the employer and that the Claimants were directly engaged by the NHS Trust. In his witness statement,

he asserted that the Trust “mandated a budget of £28 per hour, to include any employer national insurance contributions” and that “the amount paid to the candidate would therefore be £26.40 per hour”. He stated that both Claimants were “subsequently engaged by the client NHS Trust directly and issued with an employee number and payroll code”.

27. When cross-examined about the disconnect between the Candidate Assignment Schedules (which referred to an 'Umbrella Company') and the payslips (which showed 'direct engagement'), Mr Dyer explained this as the Trust using direct engagement arrangements 'for VAT reasons'.
28. When asked what he understood by 'direct engagement', he stated it meant 'when the locum is employed directly by the trust'. However, when pressed on various inconsistencies and asked to produce evidence of the contractual arrangements between the Respondent and the Trust, or evidence of direct engagement by the Trust, Mr Dyer was repeatedly unable to provide answers, stating 'I can't comment on that', 'I'm unable to answer', and 'I'm unable to comment on another organisation'.
29. Documentary evidence from the NHS Trust was unequivocal. Emails from Mr Liam Coleman, Employee Relations Manager at the Trust, to both Claimants in June 2024 stated: "you are not an employee of the Trust and are a temporary agency worker, employed by IMC Locums".
30. These statements are not determinative of legal status; I treat them as consistent with, but not constitutive of, my findings based on the totality of evidence (per Autoclenz).
31. The "Candidate Assignment Schedules" drafted by the Respondent contained a restrictive covenant. It stated: "By signing this legal document, you have agreed to be exclusively represented by IMC at the aforementioned Trust".

#### **FINDINGS OF FACT AND APPLICATION OF LAW**

32. I find, applying Autoclenz, that the written "Candidate Assignment Schedules" did not accurately reflect the true agreement between the parties. The references to "Umbrella Company" status were factually incorrect. The Claimants were never paid via any third-party umbrella company. The labels of "contractor" in those documents were inconsistent with the operational reality, and I disregard them as reflecting the true relationship.
33. I find that Maidstone and Tunbridge Wells NHS Trust were not the employer of either Claimant at any material time. There was no express contract between the Trust and the Claimants. Applying the necessity test, I do not find it necessary to imply a contract between them to explain their presence at the hospital; this is fully explained by the commercial arrangements between the Trust and the Respondent agency. The Trust explicitly disavowed any employment relationship in writing.
34. I am particularly struck by the fundamental contradictions in the Respondent's own evidence and the complete absence of documentary support for its central case. The Respondent asserts it was merely an introducing agent and that the Claimants were directly engaged and employed by the NHS Trust.
35. Yet, first, the Respondent has produced no contract, framework agreement, or correspondence with the Trust documenting any such introducing or facilitating arrangement. There is no evidence that the Trust instructed the Respondent to source

audiologists, or that the Trust was even aware these specific individuals would be working at their facilities prior to dates being agreed between Marshall and the Claimants.

36. Second, there is no evidence the Trust actively checked, vetted, interviewed, or approved either Claimant. All vetting (references, qualifications, DBS, right to work) was conducted by the Respondent. All communications about terms, rates, and work arrangements were with Mr Marshall at the Respondent. The Claimants had no direct contact with the Trust.
37. Third, the documentary evidence fundamentally undermines the Respondent's position. The Candidate Assignment Schedules were issued by the Respondent, contained terms imposed by the Respondent (including an exclusivity clause), and referred to umbrella company arrangements - none of which are consistent with direct engagement by the Trust.
38. Fourth, the NHS Trust itself explicitly contradicted the Respondent's case. In correspondence to both Claimants, the Trust stated they were "temporary agency workers employed by IMC Locums" - not employed by the Trust.
39. Finally, the Respondent's reliance on the payslip heading showing "Maidstone and Tunbridge Wells NHS Trust" is undermined by its own evidence. The payslips were not generated by the Trust's payroll department but by a third party (Pay 247) with whom, on the evidence before me, only the Respondent liaised.
40. Administrative labels on documents generated by third parties do not determine legal relationships. The Respondent's case amounts to an assertion unsupported by evidence. Beyond Mr Dyer's statement that the Trust employed the Claimants, there is no documentary or testimonial evidence establishing any employment or worker relationship between the Claimants and the Trust. The evidence establishes only one substantive relationship: between the Claimants and the Respondent.
41. The Respondent's position is, in essence, that the parties intended to create, and succeeded in creating, a relationship whereby it merely introduced the Claimants to the NHS Trust for direct engagement. To borrow the memorable metaphor of HHJ Serota in *Levy McCallum*: they say they agreed to create a horse and created a horse. But when I examine what was in fact created - looking at the contemporaneous evidence, the conduct of the parties, and the operational reality - I find that what was created was something entirely different. They may have intended to create a simple introduction arrangement, and the Respondent certainly tries to label it as such, but what they actually created was a principal-worker relationship between the Respondent and the Claimants; the metaphorical *camel* in Judge Serota's phrasing. The fact that they intended something different, and called it something different, does not change what it really is.
42. In making my findings of fact, I must evaluate the weight and reliability of the competing sources of evidence before me. The Respondent's case rests primarily on Mr Dyer's evidence, both in his witness statement and his oral testimony. However, I found Mr Dyer's evidence to be of limited assistance. Whilst he maintained a consistent position throughout that the Respondent was not the employer and that the Trust directly engaged the Claimants, this was little more than assertion.
43. When pressed on the specifics of how this arrangement operated, he was repeatedly unable or unwilling to provide answers. He could not explain the contractual arrangements between the Respondent and the Trust. He could not explain

discrepancies in rates or why the written schedules referred to umbrella company arrangements when, according to him, direct engagement applied.

44. He stated "I can't comment on that", "I'm unable to answer", and "I'm unable to comment on another organisation" when asked about matters that should have been within his knowledge as a director of the company. His evidence, in short, consisted of a bald assertion of the Respondent's position without the detail or supporting evidence needed to establish it.
45. By contrast, the correspondence between Mr Marshall and the Claimants provides a detailed contemporaneous record of how the arrangements were made and operated.
46. These messages show Mr Marshall sourcing the Claimants for the assignment; Mr Marshall setting and negotiating the rates of pay; Mr Marshall stating he would "speak to the staff bank" on the Claimants' behalf; Mr Marshall confirming *he* had "personally increased" their rate to £28.00; and crucially, Mr Marshall referring to taking a "hit on my margin" - language that clearly indicates the Respondent had a commercial margin in the arrangement and was therefore acting as principal, not mere introducer. These are not later recollections subject to the frailties of memory. They are contemporaneous communications made at the time the arrangements were being established, when Mr Marshall (the Respondent's Divisional Therapies Lead) was actively managing the Claimants' assignments.
47. Where there is a conflict between Mr Dyer's vague and incomplete evidence given in November 2025 about arrangements made in April-May 2024, and Mr Marshall's detailed contemporaneous communications made in April-May 2024 when those arrangements were being established, I unhesitatingly prefer the contemporaneous evidence.
48. It is a well-established principle of fact-finding that contemporaneous documents are generally more reliable than later recollections, particularly where (as here) the later evidence is vague, incomplete, and unhelpful.
49. The WhatsApp evidence shows the reality of the relationship as it was being formed. It demonstrates that the Respondent, through Mr Marshall, exercised control over rates, negotiated terms directly with the Claimants, had a financial interest (a "margin") in the arrangements, and acted throughout as principal rather than introducer. I accept and rely upon this contemporaneous evidence in making my findings.
50. I find that the Respondent exercised a significant degree of control over the Claimants, particularly regarding remuneration. Based on the contemporaneous WhatsApp evidence I have accepted and preferred, Mr Marshall did not merely pass on rates set by the Trust; he actively negotiated rates, personally varied terms without appearing to have to refer to the Trust as one would expect if the Trust were the employer, and acknowledged the Respondent's commercial interest in the arrangements. This is the conduct of a principal, not a mere introducer.
51. I find that the Claimants were integrated into the Respondent's business. They were subject to an exclusivity clause imposed by the Respondent, preventing them from working at the Trust via other means. This restriction is inconsistent with them being in business on their own account; they were dependent on the Respondent for this work. Furthermore, the Respondent would not need to include such a restrictive covenant for people who were employed by the Trust, as it says that they were.

52. I find they were required to perform the work personally. There was no genuine, practical right of substitution. They are qualified clinical professionals, and the nature of the roles required their specific personal service.
53. Applying section 230(3)(b) of the Employment Rights Act 1996, I find they were workers of the Respondent. There was a contract between them (the true agreement as varied by Mr Marshall); they were required to perform work personally; and the Respondent was not a client of any business undertaking carried on by them.
54. I carefully considered if they were employees under section 230(1). While there were strong indicators of employment during the specific assignments (per McMeechan), I find on balance that the irreducible minimum of mutuality of obligation required for a full contract of service was not sufficiently established beyond the duration of the individual shifts they accepted. The initial intention of both parties, despite the flawed paperwork, was to create a flexible agency-worker relationship rather than permanent employment. They therefore fall into the intermediate "worker" category.
55. While mutual commitments existed for each accepted shift, there was no obligation on the Respondent to offer, nor on the Claimants to accept, future work beyond those shifts; on balance, this falls short of a contract of service for the whole assignment period.

## CONCLUSION

56. For the reasons stated above, the Tribunal's judgment is that Ms Menezes and Mr Kurian were workers of IMC Locums Ltd at all material times. The Respondent was their *counterparty* for the purposes of the unauthorised deduction from wages provisions in the Employment Rights Act 1996.
57. The tribunal has jurisdiction to hear their claims. Case management orders will now be made to progress the case to a final hearing to determine the amounts, if any, properly payable to them.

**APPROVED**  
**Judge M Aspinall**  
**(sitting as an Employment Judge)**  
**10th November 2025**

**Sent to the Parties**  
**19<sup>th</sup> November 2025**

**For the Tribunal Office**

**P Wing**

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