EMPLOYMENT TRIBUNALS

Claimant: Miss A Ali

Respondent: Cumbria Smiles Limited

HELD AT: Manchester (in public; CVP) **ON:** 17th October 2025

BEFORE: Employment Judge Anderson

REPRESENTATION:

Claimant: In Person

Respondent: Mr Breen (Counsel)

JUDGMENT having been given orally on 17th October 2025 and written reasons having been requested prior to the promulgation of the Judgment in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. The Claimant, Miss Ali brings Employment Tribunal proceedings against Cumbria Smiles Limited.

2. At the previous Preliminary Hearing the following claims were identified.

    a. Automatically unfair constructive dismissal
    b. Whistleblowing detriment
    c. Notice pay
    d. Direct sex Discrimination
    e. Unlawful deduction from wages

3. This matter now comes before me as a Public Preliminary Hearing in order to determine the question of status.

4. The issues for me to determine today were;

   Employment status

   1.1 Was the claimant working under a contract of employment and therefore an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

   1.2 Was the claimant an employee of the respondent within the meaning of section 83 of the Equality Act 2010 in that the claimant worked under a contract of employment, a contract of apprenticeship, or a contract personally to do work?

   1.3 If not an employee, was the claimant a worker for the respondent within the meaning of section 230(3)(b) of the Employment Rights Act 1996 in that:

      1.3.1 she worked under a contract whereby the claimant undertook to do or to perform personally any work or services for the respondent, and

      1.3.2 the respondent was not by virtue of that contract a client or customer of any profession or business undertaking carried on by the individual?

5. Before me, it was common ground that in this particular case, there was no material distinction between s.83 of the Equality Act 2010 and s.230(b) of the Employment Rights Act 1996. That is to say, there was not a factual scenario in this case in which the answer to the two questions would differ.

Procedural Matters

6. The hearing took place by way of CVP.

7. Both the Claimant and Dr Hamid who is the director of the Respondent provided witness statements. Both gave live evidence and were cross-examined on those statements.

8. Unfortunately, 3 bundles were produced for this hearing. It is right to say that the vast majority of documents I was not taken to and don't appear to be relevant to the questions that need addressing in this preliminary hearing. I read a document when referred to any witness statement or when the parties took me to it.

9. As the Claimant was representing herself I sought in accordance with the overriding objective to ensure that there was equality of arms between the parties in so far as it was possible to do so. I provided basic guidance as to how to conduct a cross examination over CVP. Essentially this was to refer to a page number then ask a question, to ask short questions, to ask one question at once and to wait for the witness to finish their answer before beginning your question.

10. Throughout I sough to ensure that both parties were on equal footing in so far as it is possible.

11. Both parties made closing submissions.

Findings of Fact

12. I made the following findings of fact on the balance of probabilities.

13. The Respondent is a Dentistry Practice. Doctor Hamid is a director (and shareholder) of the respondent. He is a Dentist himself and spends some of his time working in the practice. He wished to recruit a dentist. He did this a by going to a recruitment agency. The Claimant, who is a dentist was put forward by the agency.

14. The claimant requires a visa to work. The evidence of Doctor Hamid is that the Respondent could act as the Claimant's sponsor in return for her committing to the Respondent for at least three years.

15. Dr Hamid refers at paragraphs 7 and 8 of his witness statement as the Claimant being registered on an employee (employment) visa. Somewhat obliquely this is referred to in his witness statement as "an error".

16. Doctor Hamid said it was his intention to apply for a new visa in the future but that this did not occur.

17. The evidence of Dr Hamid is that he intended to recruit a self-employed dentist.

18. The claimant and the respondent entered into a written agreement which is described as being a self-employed contract. I have read this document in full.

19. At this point, it is necessary to pause to take a note of the situation as it existed at the start of this relationship and how that sat with what the state in the form of the immigration authorities were being told at the time.

20. At the start of this relationship we are in a position whereby:

    a. Dr Hamid is seeking to recruit a self-employed person and there is a visa for an employed person.
    b. Dr Hamid's sworn evidence is that the employee visa is a mistake.
    c. The Claimant knows that she has an employee visa to work.
    d. Notwithstanding the fact that the Claimant has an employee visa to work, the Claimant then proceeds to work under a document that is expressly stated to be a self-employment contract when she knows that she has an employee visa.

21. The claimant signed this self-employed contract on the 3rd of March 2024. Page 204 of the bundle records a series of WhatsApp messages between the

parties. There is some negotiation but it is important and right to record that there is no coercion or exploitation whatsoever. The Claimant is a professional and the respondent is negotiating with her on that basis.

22. There were obligations on the claimant in the contract. She was required to provide a minimum period of use.

23. However, the claimant did have freedoms. I accept the basic evidence that the Claimant would let the reception team know when she would be available to carry out appointments. In turn the reception team would then put a note in the system to allow appointments to be made during the hours in which the Claimant said she was available. I also accept the Respondents evidence that the use of fobs in relation to other employees as a way of keeping time and working out the hours they have worked and did not apply to the claimant.

24. I also accept the Respondents evidence if she so chose, that the claimant was able to cancel appointments. There are examples provided in evidence, for example the 5th & 8th of July 2024 indicating the Claimant telling the Respondent when she would not be working. The Respondent has also provided examples of the Claimant opting to finish work at a time she chose and also informing the Respondent when she would not be working.

25. The Claimant was paid according to the work that she undertook. It was her responsibility to report the work that she had undertaken to the Respondent. Whilst the specific situation never arose in this relatively brief relationship, on the face of it, if there was no work, the Claimant would not have been paid.

26. The fee structure was that the Claimant was paid £14 per Unit of Dental Activity (UDA) undertaken and 50% of fees on private work, minus lab bills. Where patients were on the Respondents payment scheme, she would receive a proportional payment based upon the time spent treating such patients.

27. As a professional the Claimant had personal responsibility for the work she undertook. It was for the claimant to use her judgement and skill as to how the procedures she undertook were carried out.

28. Doctor Hamid has also been able to point to various occasions when the claimant has said no to him for example observing treatment he was undertaking for learning purposes.

29. At para 21 of his witness statement, Dr Hamid says this:

> "Asmaa would usually be required to provide the services personally and did not have a contractual right to send a substitute in her place."

Dr Hamid's evidence was that he attributed this not so much to the contractual relationship but to the practicalities of the situation. He makes the point that patients would be very likely if they have an appointment with the claimant to

not be happy with a substitute. He says that such a situation would likely need to last minute cancelled appointments. To describe there being no real need to send a substitute Further, he then goes on at paragraph 22 To that being no real need to send a substitute.

30. Having said that Doctor Hamid goes on to say that the claimant could have sent a substitute if she had so chosen.

31. There is no substitution clause in this self-employed agreement. . It is a professionally drafted agreement If the respondent had wanted for it to contain a substitution clause it would have been perfect open to the respondent to include such a clause , particularly in light of the drafting of the agreement.

32. In terms of credibility, the Claimant sometimes had difficulty in putting forward a cogent case that related to the issue of status. Given that she was unrepresented I made some allowance for the fact that her case may not be as coherent as it could be. At the same time, I found Dr Hamid's evidence to be reliable in part, particularly where it was corroborated. I considered his evidence regarding the position of sending a substitute to be somewhat of a stretch. In relation to the visa point, there were clearly problems for both sides and I do not elaborate further on my view of credibility on that point as it may be part of a future hearing.

The Law

33. Section 230 Employment Rights Act 1996 provides:

(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.

34. Section 83 Equality Act 2010 provides

(1) This section applies for the purposes of this Part.

(2) "Employment" means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
(b) Crown employment;
(c) employment as a relevant member of the House of Commons staff;
(d) employment as a relevant member of the House of Lords staff.

(3) This Part applies to service in the armed forces as it applies to employment by a private person; and for that purpose—

(a) references to terms of employment, or to a contract of employment, are to be read as including references to terms of service;

(b) references to associated employers are to be ignored.

(4) A reference to an employer or an employee, or to employing or being employed, is (subject to section 212(11)) to be read with subsections (2) and (3); and a reference to an employer also includes a reference to a person who has no employees but is seeking to employ one or more other persons.

35. There is a wealth of authority at EAT, Court of Appeal and Supreme Court level regarding employment and worker status.

36. The most useful starting point is the Judgment of Lord Clarke in Autoclenz Limited v Belcher [2011] IRLR 820 in which he considered previous authority and the need for the Tribunal to assess 'the reality of the situation'. He held:

"The question in every case is, as Aikens LJ put it at para 88 quoted above, what was the true agreement between the parties." (para 29)

37. He continued:

"So the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part. This may be described as a purposive approach to the problem. If so, I am content with that description."(Para 35)

38. The reason for Autoclenz being the starting point is that it provides the basic framework for a Tribunal to assess status. The Tribunal is looking at 'the reality

of the situation' which reflects the fact that this is a work related situation with statutory provisions providing rights dependent on status.

39. In understanding whether or not someone is an employee, it is necessary to analyse the following points:

    a. Mutuality of Obligation
    b. Personal Service
    c. Control

40. Mutuality of obligation is an essential element of the employment relationship. In Carmichael v National Power Plc [1999] ICR 1226 Lord Irvine referred to it as the 'irreducible minimum of mutuality of obligation'. Therefore, a finding that there is mutuality of obligation is a necessary element of establishing employee status.

41. A right to substitute is incompatible with a requirement for personal service.

42. In terms of worker status under the Employment Rights Act 1996, once a contract is established then the focus is on personal service.

43. In Pimlico Plumbers Ltd v Smith [2018] IRLR 872 the ostensible relationship between the parties was that of an independent contractor. However, there was an obligation to perform work personally or send another company operative in Mr Smith's place. This limited right of substitution did not defeat worker status on the facts as the 'dominant feature' of the contract required personal performance.

Conclusions

44. To begin, I will consider the question of employment status.

45. In so doing, I must weigh up all relevant factors and apply them to the tests have been set down by case law.

46. Firstly, it is right to say that there was a degree of control. The written contract imposes obligations between the parties. Dr Hamid was plainly senior to the Claimant and was her senior.

47. There was a restraint of trade clause on the Claimant. This is relevant to control. It is the more powerful party imposing terms restricting the ability of the Claimant to work elsewhere even if she no longer works for the practice.

48. In terms of mutuality, I accept that there are some relevant factors. These are:

    a. The contract contains a minimum service level.
    b. There was plainly a commercial need for the Claimants services

49. However, the broader evidence is of a looser relationship in which the Claimant could choose not to work rather than request not to work. She had autonomy over her hours.

50. The pay arrangements are also supportive of a lack of mutuality. I do not treat this as determinative, but it is relevant. The Claimant was also able to set when she commenced work and to decide the length of appointments.

51. In respect of the minimum service level in the contract, I do not accept that this in isolation created mutuality. Mutuality of obligation is just that, mutual. The Respondent was not under a contractual or implied obligation to provide the Claimant with work and in any event, the looser working relationship that I describe above is indicative of the lack of mutuality.

52. On balance, I accept the submission that the Respondent was not obliged to offer work and the Claimant was not obliged to accept work. The irreducible minimum of mutuality of obligation was not present. The fact that there was personal service and a degree of control does not override this.

53. I now turn to worker status. There was plainly a contract (albeit not one of employment) between the parties. I consider the key issue to be that of personal service. The Respondent seeks to rely on two points:

    a. An assertion that the Claimant could have sent a substitute
    b. The fact that the Claimant worked elsewhere else

54. I am not at all persuaded by the Respondents position on substitution. I find that:
    a. The Claimant did provide her services personally. She did so consistently.
    b. The Claimant was not able to recruit a locum. That was for the surgery to do.
    c. It was open to the Respondent to include a substitution clause in such a formal agreement. They did not seek to include a substitution clause.
    d. No substitute was ever provided.
    e. Much of Dr Hamid's evidence is in support of there being a requirement for personal service
    f. It is at best a bare assertion with limited supportive reasoning and indeed if there was a substitute it would have caused significant problems.

55. If I were wrong in respect of my analysis of substitution, I would still in any event find that 'personal service' was plainly the dominant feature of the contract as per Pimlico Plumbers.

56. In terms of the suggestion that the Claimant was in business on her own account, she had 8 hours work on a Saturday at the Darlington Practice before beginning with the Respondent. The existence of this one other modest role is not indicative of being in business on your own account. It is having two jobs.

57. The fact that the Claimant was planning to but had not established her own place of work again is not sufficient. That is normal career planning that would be undertaken by any individual looking to make future plans.

58. No wider evidence of being in business on your own account was put before me. .e.g. marketing, advertising, risk taking, seeking to obtain assets, competing in the market. In contrast, there is a degree of control within the workplace as outlined above, further, there are restraint of trade clauses imposed on the Claimant that exist once the relationship ends. None of these things are determinative, but the evidence on this point does weigh heavily in favour of there being no self-employment.

59. Where this takes the situation is that the Claimant was a worker for the purposes of the Employment Rights Act 1996 and Equality Act 2010.

60. The Claimant was not an employee. There was an absence of mutuality of obligation.

61. Finally, I raise the point of illegality. I do not have sufficient information to deal with the point today. The lack of information relates to a lack of information regarding the effect in law of having an employee visa in relation to two parties who both willingly enter into a written self-employment contract at the time and in respect of someone who is subsequently found to be a worker by an Employment Tribunal.

62. Having canvassed the point with the parties, the point has been added to the list of issues for the full hearing rather than dealt with today.

Postscript

63. Upon receipt of the request for written reasons, there was some ambiguity in whether or not reasons were being sought for the case management order or the substantive decision. I sought clarification as the CMO reasons had already been sent for promulgation. Unfortunately, given the backlog these matters don’t seem to have been processed as of yet. Therefore, I then proceeded to interpret the request for written reasons at its broadest, hence the provision of these written reasons.

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Case No. 6015846/2024

Employment Judge Anderson

18th November 2025

JUDGMENT SENT TO THE PARTIES ON

9 December 2025

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