EMPLOYMENT TRIBUNALS

CLAIMANT: Mr Rose

RESPONDENT: Pimlico Plumbers Ltd

HELD AT: London South (by CVP) **ON:** 8-9 October 2025

BEFORE: Employment Judge Hart

REPRESENTATION:

For the claimant: Mr Milsom (counsel)
For the respondent: Mr Stephens (counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The claimant is a worker under section 230(3)(b) of the Employment Rights Act 1996, section 54(3) of the National Minimum Wages Act 1998 and Regulation 2(1) of the Working Time Regulations 1998.

REASONS

INTRODUCTION

1. The claimant, Mr Rose, was at all material times a plumber engaged by the respondent, Pimlico Plumbers Ltd (Pimlico), a provider of plumbing and other property maintenance services. He is bringing claims for unpaid holiday, unpaid wages, non-payment of the minimum wage, whistleblowing detriment and unfair automatic dismissal (whistleblowing). This hearing was a preliminary hearing to determine whether he was a worker under section 230(3)(b) of the Employment Rights Act 1996 (ERA 1996) and equivalent provisions under section 54(3) of the National Minimum Wages Act 1998 (NMWA 1998) and regulation 2(1) of the Working Time Regulations 1998 (WTR 1998).

THE HEARING

2. The hearing took place over two days. Mr Rose was represented by Mr Milsom of counsel and Pimlico by Mr Stephens of counsel. Both are thanked for their comprehensive submissions and assistance during this hearing.

3. For the hearing I was provided with the following documents:
   - 3.1 An agreed Bundle of Documents for Preliminary Hearing of 596 pages, the references to page numbers in this judgment are to the pages in this bundle.
   - 3.2 Respondent's Authorities Bundle of 312 pages.
   - 3.3 Claimant's Supplemental Authorities Bundle of 844 pages.
   - 3.4 Witness statements for Mr Rose, Mr Chapman and Mr Allen.
   - 3.5 Respondent's Opening Note.
   - 3.6 Preliminary Hearing on Status: C's submissions.

4. Mr Rose gave evidence on his own behalf. Mr Chapman (Head of Finance) and Mr Allen (Head of Service Delivery) gave evidence on behalf of Pimlico.

5. On completion of the evidence both parties provided oral submissions. Judgment was reserved.

CLAIMS / ISSUES

6. At the start of the hearing, Mr Rose stated that he is no longer claiming that he was an employee under ERA 1996 s 230(3)(a). That claim has been dismissed upon withdrawal. Further, Pimlico conceded that Mr Rose was a worker under the expanded definition in section 43K Employment Rights Act 1996 (applicable to whistleblowing claims). Therefore the sole preliminary issue to determine, as set out in the Notice of Preliminary Hearing dated 17 April 2025, was as follows:

   Was the claimant a worker of the respondent as defined by s 230(3)(b) ERA 1996 (and equivalent provisions in s 54(3) NMWA 1998 and r 2(1) WTR 1998), i.e.:
   (a) did he work under a contract to perform the work personally; and
   (b) was the respondent something other than a client or customer of the claimant's profession or business?

7. There was a potential further issue that was not pursued at the hearing due to insufficient notice. That was whether, with respect to the holiday pay claim, if the tribunal found that there was no employment relationship under UK law, whether there was an employment relationship under EU law.

FINDINGS OF FACTS

8. The facts were largely not in dispute. Where they were I have only made findings of fact in relation to those matters relevant to the issues to be determined. Where there were facts in dispute I have made findings on the balance of probabilities. I confirm that I have taken into account all the documentation and evidence before me and if something is not specifically mentioned that does not mean that I have not considered it as part of my deliberation.

About the claimant

9. Mr Rose was a qualified plumber. He lived in Borehamwood, Hertfordshire (outside Pimlico's territorial area). He obtained an NVQ Level 2 in plumbing and asbestos awareness in or around 2002/3. He was then taken on as an apprentice for two years with Morgans Maintenance Limited (a small independent plumbing and heating contractor).

10. In 2005 he started his first company Rose Plumbing and Engineers Heating Ltd.; which was wound up in 2017. On 21 April 2017 Mr Rose incorporated his second company "JDM Renovations Ltd" (JDM): **pg 466**. Mr Rose was the sole director, shareholder and employee of both companies. The company paid his salary and owned his tools and materials. His tax returns and other financial obligations were completed by his accountant.

11. Mr Rose started working for Pimlico on 12 October 2020. JDM continued to operate throughout the period that Mr Rose worked for Pimlico. However, he did not continue to provide services to his previous clients or maintain his own independent business. During this period his sole income was from Pimlico.

About the respondent

12. Pimlico was a property maintenance services company operating in the Greater London area. It provided a variety of services including plumbing, heating, electrical, roofing and drainage services. At the material time trade professionals (which I have referred to as engineers[1]) were employed as subcontractors operating though limited companies. Engineers did not have the option of being directly employed by Pimlico; if they did not have a limited company then they would not be permitted to enter into a contract with Pimlico. It was irrelevant whether the limited company already existed or had been created for the purposes of entering into the Pimlico contract. The general practice was for the limited company to employ one person, the engineer, although Pimlico's case was that there was nothing preventing more than one person being employed by a single limited company. Pimlico had approximately 200 engineers on its books, of which 64 were in the plumbing trade. On 7 June 2025, Pimlico moved to a franchise business model. Since this post-dated Mr Rose's engagement this contractual change was not relevant to my considerations; Pimlico accepting that he was not a franchisee during his employment, although this is how he is referred to in some correspondence.

[1] In the documentation and evidence engineers have been referred to as "engineers", "operatives", "subcontractors" and "franchisees".

The written contracts

13. I have been provided with the following written contracts and agreements between Pimlico and JDM and Pimlico and Mr Rose.

14. An Agreement between Pimlico (referred to as the "Company") and JDM (referred to as the "Contractor"); **pgs 99-102**. Relevant clauses were as follows:

    14.1 Clause 2.2.2: The Contractor "*will make available to the Company Gideon Rose, or an alternative engineer as per the terms of clause 2.5 to provide the Services on the terms of this agreement*".

    14.2 Clause 2.2.3: That any person assigned to provide Services by the Contractor was required to enter into *"such agreement that the company may reasonably request to protect its legitimate business interests*".

    14.3 Clause 2.3: The Contractor "*shall provide the Services for such periods and in such locations as may be agreed with the Company from time to time….. the Company shall be under no obligation to offer work to the Contractor and the Contractor shall be under no obligation to accept such work from the Company"*.

    14.4 Clause 2.4: The Contractor to "*provide*" and "*insure"*, "*such tools, equipment, materials and other items as shall be required for the performance of the Service except where it has been agreed otherwise*".

    14.5 Clause 2.5: The Contractor may appoint "*with the prior approval of the Company (such approval not to be unreasonably withheld), a suitably qualified and skilled substitute… provided that the Substitute enters into such direct undertakings with the Company as the Company may reasonably require".* No prior approval was required if the substitute was another engineer who provided Services to the Company.

    14.6 Clauses 2.6 and 2.7: The Contractor was responsible for any expenses in relation to the provision of services and maintaining suitable professional indemnity cover to a limit of £5 million.

    14.7 Clause 2.8: "*Nothing in this agreement shall prevent the Contractor (or any person supplied to the Company by the Contractor) from being engaged, employed or concerned in any other business, trade profession or other activity*", except during the course of the Agreement the provision of equivalent services to the Company's customers.

    14.8 Clause 3.1: The Company agreed to pay a fee to the Contractor of 50% of the cost charged to the client (customer), provided that the Company had received cleared funds from the client and there were no outstanding complaints in relation to the work performed by the Contractor.

14.9 Clause 3.2: Payment to be made to the Contractor upon the Contractor submitting appropriate invoices weekly in arrears. If an invoice submitted by the Company to a client (customer) remained unpaid (in whole or in part) for more than 1 week, 1 month or 6 months the fee payable to the contractor was to be reduced by 15%, 50% and 100% respectively.

14.10 Clause 3.4: The Contractor was required to charge the customer 25% trade mark-up (pre-VAT) on any materials used on a job. The Contractor to be entitled to a share of between 7.5 and 12.5% of such markup.

14.11 Cause 3.7: Required the Contractor to hire a Pimlico branded van for the provision of Services.

14.12 Clause 4.1: The Contractor was engaged by the Company as an *"independent contractor, being in business on its own account"*.

14.13 Clause 4.2: The Contractor indemnified the company for taxation, costs, expenses or penalties arising out of the provision of services.

14.14 Clause 5: The Agreement was a permanent arrangement terminable by written notice.

14.15 Clause 6.1: The Agreement was an entire agreement.

This Agreement was signed by Mr Rose "*on behalf of the Contractor*": **pg 102**. It was not counter signed but the person identified as acting on behalf of Pimlico was Mr Crabtree (HR Manager).

15. A letter from Mr Rose on Pimlico headed letter paper (Side Letter[2]), which stated that "*in consideration*" of Pimlico (referred to as the "Company") entering into the Consultancy Agreement[3] with JDM (referred to as the "Consultant Company"), "*I agree to the following*", which included: **pgs 97-98.**

15.1 Paragraph 1: *"I warrant"* that the Consultant Company is entitled to enter into the Agreement with the Company and make available *"my*" services under the terms of the Agreement.

15.2 Paragraph 2: *"I agree that I shall procure*" that the Consultant Company shall at all times observe and perform the obligations contained in the Agreement. Further "*I undertake to indemnify*" the Company for any loss or damage incurred as a result of any failure by the Consultant Company to perform its obligations.

15.3 Paragraph 3: "*I agree*" that the Agreement is intended to constitute a *"contract for services between independent contractors and shall not be construed as creating a relationship of agency, partnership, work or employment*. Further, "*I warrant that I do not and will not claim to be an*

[2] Mr Rose had referred to this as a Consultancy Agreement but it is referred to as a Side Letter in the Index

[3] I understand this to be a reference to the Agreement set out in paragraph 14).

employee or worker of the Company and that termination of the agreement shall not constitute a dismissal…. I therefore agree to indemnified the Company against any liability for employment-related claims or any claim based on employee, partner, member or worker status (including costs and expenses) that I (or the Consultant Company or any substitute that I engage) bring(s) against the Company arising out of or in connection with the provision of services outlined in the Agreement".

15.4 Paragraph 4: That if the Consultant Company is in breach of any of its obligations to Mr Rose, *"I undertake to fulfill all of my obligations under this letter and as envisaged by the Agreement"*.

The letter was signed by Mr Rose in a personal capacity: **pg 98**.

16. A Confidentiality and Restriction Deed from Pimlico (referred to as the "Company") addressed to Mr Rose, at JDM (referred to as a "personal services company") which included: **pg 90-94**.

16.1 Clause 1.1: "*you and / or your personal services company*" may provide services to other individuals or entities, but "*you shall not be permitted*" to provide services to Pimlico's customers or prospective customers other than under the Agreement.

16.2 Clause 1.2: "*You*" have no authority to bind Pimlico unless specifically authorised to do so in writing or to the extent necessary for the provision of "*your"* services to Pimlico.

16.3 Clause 1.3: under clause 1:

16.3.1 Capacity is defined as *"agent, consultant, director, employee, owner, and shareholder or in any other capacity*".

16.3.2 Customer is defined as *"any person, firm, company or entity who or which at any time during the Relevant Period (i) was provided with goods or services by the Company; or (ii) was in the habit of dealing with the Company, and about whom or which you have confidential information; and in each case with whom or which you had material dealings at any time during the Relevant Period".*

16.3.3 Prospective customer is defined as "*any person, firm, company or entity to whom or which, during the period of six months prior to the Termination Date, the Company had submitted a tender, quotation, made a pitch or presentation or with whom or which it was otherwise negotiating for the supply of goods or services and with whom or which you had material dealings at any time during the Relevant Period".*

16.3.4 Termination date is identified as the date "*on which you or any personal service company with which you are associated cease to provide services to the Company".*

16.4 Clause 1.4: "*You will not in any capacity, directly or indirectly, on your own behalf or in conjunction with any firm, company or person"* with the following restrictions on termination of the Agreement:

16.4.1 Clause 1.4.1: for 6 months to not *"solicit or endeavour to entice away from the Company the business or custom of a Customer or Prospective Customer with a view to providing goods or services to that Customer in competition with any Restricted Business or otherwise induce, solicit or entice or endeavour to induce, solicit or entice any Customer to cease conducting, or reduce the amount of, business with the Company or discourage or prevent any Prospective Customer from conducting business with the Company";*

16.4.2 Clause 1.4.2: for 6 months to not "*be involved with the provision of goods or services to, or otherwise have any business dealings with, any Customer or Prospective Customer in the course of any business which is in competition with any Restricted Business*";

16.4.3 Clause 1.4.3: for 6 months to not "*offer to employ or engage or otherwise endeavour to entice away from the Company any Relevant Individual (whether or not such person would breach their contract of employment or engagement)";*

16.4.4 Clause 1.4.4: for 6 months to not "*employ or engage or facilitate the employment or engagement of any Relevant Individual (Whether or not such person would breach their contract of employment or engagement) in any business which is in competition with any Restricted Business";* and

16.4.5 Clause 1.4.5: *"at any time after the Termination Date represent yourself as being in any way connected with (other than as a former contractor), or interested in the business of the Company or use any registered names or trading names associated with the Company".*

16.5 Clause 1.5.2: The restrictions in clause 1.4 does not prevent "*you*" from holding shares in a listed company or *"being engaged or concerned in any business insofar as your duties or work relate solely to geographical areas that are not in competition"* with Pimlico's business.

16.6 Clause 2.1: "*You*" agree to be bound by an indefinite confidentiality clause.

16.7 Clause 2.2: *"You*" shall not make a record relating to any matter within the scope of Pimlico's business and shall return any records made to Pimlico on termination of the Agreement.

16.8 Clause 2.3: *"You"* shall not upload confidential information on to any social networking systems and shall not contact actual or potential clients via social networking systems.

16.9 Clause 2.4: "*You"* (save in specified circumstances) shall not publish on social networking systems any material, communications or content that

may damage Pimlico's reputation or which may be defamatory or derogatory.

16.10 Clause 2.6: *"Under no circumstances may you provide a customer with your or your personal service company's contact details*". [Mr Rose was provided with a Pimlico email address for all communications].

This was signed as a deed by Mr Rose in a personal capacity: **pg 94**. It was not counter signed but the person identified as acting on behalf of Pimlico was Mr Crabtree (HR Manager).

17. A Vehicle Hire Agreement for use of the Pimlico van: **pg 95**. This included a requirement that "*Operatives must drive carefully and considerably at all times - the person you upset could be your next customer. The way you drive reflects upon the company and its public image"* (clause 1). It included clauses on vehicle safety, prohibition on unauthorised private use and vehicle cleaning. It concluded with a declaration that "*I have read and I understand the above terms*" signed by Mr Rose in a personal capacity (albeit in error it is stated *"for and on behalf of Pimlico Ltd"*).

18. An Equipment Inventory and Company Mobile Phone & iPad Agreement: **pg 103.** This included provision of a company iPad and charger, mobile phone uniform and vehicle. It contained a "Company Mobile Phone and iPad Agreement" which stated *"I, Gideon Rose, understand that I am liable ….*". It also contained an "Declaration of Operation" which stated "*I can confirm….*" and was signed by Mr Rose in a personal capacity. There was also a "Declaration for and on behalf of Pimlico Plumbers Ltd" which referred to Mr Rose as an "*Operative*" and stated *"I can confirm that the above named Operative has been issued with the items detailed"*. It goes on to state that "[T]*he Operative is aware that all costs for damaged /lost/ stolen/ non-returned equipment… will be recovered from the Operative"*. This was signed by Mr Wood on behalf of Pimlico: **pg 104**.

19. A Company iPad Agreement which stated that it was *"for Engineers who are already contracted to Pimlico Plumbers Ltd":* **pg 105.** It included a tick box confirmation that Mr Rose understood and agreed to the iPad insurance cover, provided by Pimlico. It stated *"please be aware that you are liable for any damage or loss …*". It also contained a standard declaration confirming that "*I am aware that I must return the iPad and charger*" on termination of the Agreement and that if these were not returned a deduction would be made from monies "*owed to me*" by Pimlico. The agreement was signed by Mr Rose in a personal capacity and was countersigned by Mr Wood.

Allocation of work

20. Customers entered into a contract with Pimlico, who presented to them a trusted and prestige brand. If the customer needed a job done, they would contact Pimlico's central control room who would allocate an engineer to attend their premises. The engineer would be informed by telephone (and more

recently by App) of the job details. If the engineer accepted the job then they would attend the customer in a Pimlico van, wearing a Pimlico uniform and carrying a Pimlico ID card. The engineer determined how a job was done and would provide the customer with a quote using Pimlico's hourly rates[4]. Once the job was completed the engineer would generate a Pimlico invoice using the Pimlico iPad. The customer paid Pimlico, not the engineer personally or their company. Upon completing the job the engineer would contact the control room who would allocated the next job. Mr Rose stated that he had no control over which jobs he was allocated or the volume of work he received. He could, however, refuse to take a job, for example if it was not suitable or not in his skillset. This is consistent with his response to IR35 question 9 where he referred to being able to reject jobs that he was not comfortable or confident to do (see paragraph 38).

Availability

21. When Mr Rose first started to work for Pimlico engineers were required to inform the control room of their availability, this is now done via an App. Mr Allen accepted that the control room assumed that engineers were available Monday to Friday 9am to 5pm unless advised otherwise. In Mr Rose's case I have found that the agreement was that he make himself available Mondays to Fridays 8am to 6pm (see paragraph 33). However I accept that other engineers worked different patterns and could limit their availability to certain days of the week or certain months of the year and could take periods of time off. Mr Chapman stated that on any given day 20-25% engineers were not available to accept work.

22. Mr Rose stated that if he wished to take a day off he was required to inform the control manager in writing. Mr Allen disputed this stating that engineers would usually inform the control room as a matter of courtesy, but it was not a requirement. I do not accept his evidence. It does not appear to me to be practicable for Pimlico to have 200 engineers on its books without knowing on any given day which engineers were or were not available. Further Mr Rose's response to IR35 question 17 was that he was required to give as much notice as possible and to do so by email and telephone (see paragraph 38).

23. Whilst Mr Rose did not provide a substitute during his employment, I accept Mr Allen's evidence that other engineers did. However it had to be another Pimlico plumber or someone pre-approved by Pimlico. That approval included Pimlico checking the substitute's qualifications, completing necessary vetting such a DBS checks and making sure they were properly employed and insured. Further, an engineer could call out a third-party company for a trade not offered by Pimlico without prior approval, if verbally discussed with Pimlico. The example Mr Allen gave was using MagicMan to repair damage to tiles in a bathroom.

Conduct and Complaints

[4] Most jobs were paid an hourly rate. A day rate was applied if the engineer was to be on site all day. A job rate was used for occasional larger sales jobs, where the rate was estimated by the Pimlico sales team.

24. It was not disputed that Mr Rose was provided with a one page "dos and don'ts". In addition he was subject to internal rules and regulations on "*Dress code uniform strict rules around the uniform. Good working practise, good behaviour representing company at all times."* (see paragraph 38). Mr Allen in evidence accepted that engineers were required to comply with good working practices such as use of a dust sheet to protect a customer's property and good behaviour. Further that engineers were required to wear black safety boots and attend safety training for health and safety reasons. Mr Rose was dismissed due to concerns about his behaviour (see paragraph 52).

25. There is evidence that engineers were monitored. Pimlico kept a record of why jobs were refused, and also how an engineer was operating (see criticism about Mr Rose providing quotes and not starting work straight away) (see paragraph 51). Mr Rose stated that if he was not at the specified location he would get a phone call, since his movements were monitored on the GPS tracker fitted to his van. Mr Allen denied this, stating that the tracker was in event of theft or accident. I prefer the evidence of Mr Rose since it is consistent with his evidence that he was required to inform the control room of his allocated location (NW3) at the start of each day (see paragraph 33).

26. If there was a customer complaint, Mr Chapman stated that usually the original engineer would return to solve any issues but if another engineer had to attend then the original engineer's company would be charged the cost of the new engineer's attendance. Mr Rose denied that he was provided with the choice of returning to resolve any issues. He said that if a complaint was received from a customer it would be directed to the control room who would assess it and direct whether any remedial work was to be done by the original engineer or another engineer (see eg **pg 480**). I accept his evidence that he was not consulted in advance of this decision; it seems to me more likely that Pimlico would make this decision since the complaint came to them first. This conclusion is supported by an email dated 4 July 2025 which referred to a customer complaint that Mr Rose had failed to start the work straight away following the provision of a quote; Pimlico sent another engineer to do the work and there is no suggestion that this was raised with Mr Rose first: **pg 544**.

Payment

27. Mr Rose was paid half the hourly rate for labour to that charged to the customer. JDM would be reimbursed the cost of any materials used in full plus a proportion of the mark-up on those material; the rest being retained by Pimlico. Pimlico would then make a number of deductions from the outstanding balance: **pg 459-464.** Mr Rose stated that he did not know how some of these deductions were calculated which was why he queried the deductions (see paragraph 45). These varied over the period that Mr Rose worked for Pimlico and included deductions for:

    27.1 Van rental and van insurance: This was a monthly charge for use of the Pimlico van.

27.2 Mobile phone charges: This was a monthly charge for use of Pimlico mobile phone.

27.3 Ipad insurance: This charge was stopped since it was cheaper to buy new tablets.

27.4 Uniform: All engineers were required to purchase Pimlico uniforms.

27.5 Cash collected: Where a customer had paid in cash it would be retained by the engineer and the sum deducted from the outstanding balance.

27.6 Call back charges: This was a charge for the cost of another engineer attending a customer where there had been a complaint or a problem with the work that needed to be resolved.

27.7 Parking tickets admin fee: If an engineer incurred a parking fine whilst using a Pimlico van, and they failed to pay it, then Pimlico would pay and deduct the cost of the fine plus an administrative fee of £25.

27.8 Public liability insurance: Pimlico paid the premiums and would deducting this from payments.

27.9 Retention: This is a sum of £1000, to cover any parking tickets or call-backs after termination of the contract.

27.10 Technical charge and management service fees: These were charges introduced shortly before Mr Rose's dismissal in preparation for the move to franchise agreements.

28. Payment was made to JDM. The payment was gross and JDM was responsible for payment of all tax.

29. JDM was not required to submit invoices to Pimlico for the work that Mr Rose did. In order to be paid Mr Rose was required to submit a timesheet, confirming the number of hours worked on any job. Pimlico's internal record (job count) recorded the jobs done, date, customer details and invoice number against Mr Rose's personal name (not that of his company): **pg 587.**

30. Pimlico provided Mr Rose with pay slips in his own name setting out his pay and deductions (see example dated by 25 February 2022): **pg 455.** Mr Chapman explained that the reason that the pay slips were in the engineer's name and not that of his company was because they were produced using the Sage 50 payroll system which automatically generated the name of the individual on the pay slip. A bespoke system was too costly. Mr Chapman claimed that the address on the slip was that of the registered office of JDM, however it is the same as Mr Rose's personal address and therefore it could equally be his personal address: **pg 444.**

Chronology of events

31. On or around 15 September 2020 Mr Rose responded to an advert in TotalJobs (a recruitment agency) for a plumber earning 95K to 99K per annum for Pimlico: **pg 485**. The advert identified that the post was "self-employed". In terms of benefits it stated that "*as a business owner, you will enjoy flexibility, allowing you to determine your own availability and earning potential*". Mr Rose stated that the advert did not reflect what he was told at the interview.

32. On 16 September 2020 he attended an interview for which he was directed to bring proof of identity, references and qualifications. He was told to *"dress in full Business Attire":* **pg 580.**

33. Mr Rose stated that at the interview Mr Wood, acting for Pimlico, told him that he was expected to be available Mondays to Fridays 8am to 6pm. He said that he was told that this was non-negotiable. Mr Rose recalled this because it meant that *"it put him outside the realm of being able to maintain my own customer base".* He informed Mr Wood that this was a serious decision for him since he would lose his own business as a consequence. He decided to join Pimlico because it provided him with a lifestyle change. This was disputed by both Mr Chapman and Mr Allen who stated that engineers were not required to be available to accept work during particular hours or on any particular days. Neither Mr Allen nor Mr Chapman were present at this interview, nor were they employed by Pimlico until a couple of years later. I consider that Mr Rose was giving a truthful account of what was discussed at the interview, it was detailed and he acted on the agreement by reporting to the control room every day around 7:30 confirming his availability and that he was at his allocated post code location (NW3). He also sold his van (see below). I did not consider that his evidence was undermined by his answers to IR35 (see below).

34. On 24 September 2020 Ms Lewis (Recruitment Compliance Administrator for Pimlico) emailed Mr Rose stating "*the Pimlico group would like to take this opportunity to congratulate you on your new position and look forward to you joining the team!*": **pg 488.** He was asked to complete an online asbestos awareness course costing £15 plus VAT and was told that this would be required once a year.

35. On 7 October 2020 Ms Lewis chased Mr Rose for his asbestos awareness certificate, proof of national insurance, and proof of address. Mr Rose was informed that his contract with Pimlico was *"subject to us completing these checks"* : **pg 489.**

36. On or around 12 October 2020 Mr Rose signed the Agreement (**pg 102)**, Side Letter (**pg 97-98),** Confidentiality and Restriction Deed **(pg 94),** Vehicle Hire Agreement **(pg 96)**, Equipment Inventory **(pg 104)** and Company iPad Agreement **(pg 105)**. He also signed a Contractor Personal and Ltd Company C.I.S Details Form provided on Pimlico Plumber's letterhead: **pg 445.** These were presented by Pimlico for Mr Rose to sign and there was no discussion as to the terms. Mr Rose asked to have higher insurance cover but that was refused.

37. On commencing work for Pimlico Mr Rose sold his own van. He had asked whether he could use his own van and been told that he could not. Since he was working five days a week for Pimlico he decided it was not cost-effective for him to retain his own van.

38. On 28 April 2021, Mr Rose attended an IR35 interview conducted by Pimlico to determine his employment status for tax purposes: **pg 450-452**. During this interview Mr Rose confirmed that:

    38.1 In response to question 4: "*Do you feel that this contract stops you from doing similar work for other clients?"* Mr Rose responded, "*Busy enough to just do work for Pimlico".* [I note that Mr Rose did not answer this queston, but merely stated that he was "busy enough".]

    38.2 In response to question 8: "*If you do not want to take on a job or are unavailable, how would you communicate this to Pimlico (if there were a need to communicate this)? Would there be any consequences for refusing a job/assignment?"* Mr Rose responded "*I will let them know why I don't want to. I don't know I don't feel like there would be. There is a reason why I not able to do the job".* [I note that this was the answer he gave in 2021, predating the correspondence set out below in relation to his request to limit job locations].

    38.3 In response to question 9: "*How much control do you have over the type of jobs that you work on?"* Mr Rose responded "*I feel comfortable with it to take on job that I'm not comfortable or confident to do something I can refuse. (sic)".*

    38.4 In response to question 12: "*Do you consider that there is a requirement to start and finish at a certain time, or can you decide your own working hours*?" Mr Rose responded "*I am available for pimlico 8-6 Monday to Friday".* [I consider that this is consistent with the agreement that he make himself available at these times].

    38.5 In response to questions 13 and 14, Mr Rose stated that there was no requirement to take on a certain number of jobs a day, and that he had neither been rewarded nor penalised for taking on a high of low number of job respectively. [I note that this predated events set out below].

    38.6 In response to question 17: *If you wanted to take a "day off", would you need to communicate this to Pimlico? If so, how far in advance would you do this and would this need to be in writing?"* Mr Rose responded *"As far as I'm aware require as much notice as possible. Email and ring a control manager".*

    38.7 In response to question 17: "*Are you subject to any internal rules and regulations, other than for example, health & safety, security, confidentiality?"* Mr Rose responded *"Dress code uniform strict rules around the uniform. Good working practise, good behaviour representing company at all times".*

39. On 24 May 2021 HMRC stated *"your answers told us the worker or their business will have to fund costs before you pay them*" and confirmed that Mr Rose was a "*worker… working on a business or business basis*": **pg 446.**

40. In July 2022 Mr Chapman commenced working for Pimlico.

41. On 5 November 2022 Mr Rose received a group email from Mr Bridges (CEO). It was addressed to *"Dear Engineer*" and requested that he sign the franchise agreement, stating that after 29 November 2022 "*we will prioritise work to those engineers that had signed the paperwork":* **pg 492.** Mr Rose did not sign this agreement.

42. On 29 March 2023 Mr Rose emailed the control desk and dispatch team stating that he will "*work in central London locations only*" due to the quality of plumbing installations in inner London compared with outer London locations. He stated that he would be available in the morning "*from NW3 (as usual) but for locations inwards (towards central London) of this postcode*": **pg 543**.

43. On 17 May 2023 Mr Rose complained that the number of jobs that had been offered to him had dramatically reduced: **pg 502.** Pimlico Engineer Support responded that "*as discussed you will need to make yourself available for work in the London area*": **pg 502.** In a further email dated 19 December 2023 Mr Lippett (Head of Service Delivery) conducted a review of Mr Rose's earnings informing him that: **pg 506.**

    "… Franchisees are not able to set specific territory areas but do have the flexibility to choose their working days, specific times, and whether to accept opportunities or not.

    As a reminder we cannot accommodate requests from Franchisees to receive opportunities exclusively in certain areas, as this would imply approval of geographically limited territories, which is not the basis of our partnership.

    While we understand that you may prefer to work in certain areas, turning down opportunities in specific locations is not in line with the spirit of our partnership. Doing so may result in a reduced pipeline of opportunities for yourself."

    At the time the franchise model was still in development, but it is clear that this requirement was equally being applied to sub-contractors like Mr Rose.

44. Mr Allen's evidence was that engineers were entitled to choose the areas they wanted to work, however the smaller the area the fewer the opportunities available to them. I accept that the final paragraph of Mr Lippett's email appears to support Mr Allen's evidence, however the email is contradictory since the rest of his email and the previous email of the 17 May 2023, made it clear that Pimlico did not permit engineers to set specific territorial areas. I therefore find that Mr Rose was not permitted to limit his territorial area.

45. On 11 October 2023 Mr Rose emailed Pimlico querying deductions amounting to £17,742.95 between February and October 2023: **pg 583-585.**

46. On 28 February 2024 Mr Poynter (Facilities Manager) emailed Mr Rose informing him that Pimlico had a smoke free policy, which prohibited smoking or vaping in company vehicles: **pg 515**. He went on to state that *"Potentially, self employed workers could have their contract terminated if found to be in breach of the Smoke Free Policy".*

47. On 20 May 2024 Mr Allen commenced working for Pimlico.

48. On 16 June 2024 Pimlico introduced an "availability App", SimPRO. On 17 June 2024 Mr Rose was required to attend SimPRO Mobile training and was informed that if he failed to do so he would not be allocated any SimPRO jobs: **pg 534**.

49. Around the same time, Pimlico introduced a new system whereby invoices were to be provided by the engineer to the customer using a Pimlico template and headed paper: see eg pg **474-479**. This was in preparation for the transfer to the franchise model. This provided JDM's registered address at the bottom. Pimlico's standard terms and conditions had been amended to make it clear that services were provided either by Pimlico or an independent company permitted to use Pimlico's name. Previously the customer had been unaware that the engineer was a subcontractor and the name of the engineer's company. Payment was still made by the customer to Pimlico.

50. On 18 June 2024 Mr Clarke (Managing Director) emailed Mr Allen and Mr Donovan (Head of Commercial) stating *"Suggest we bring Gideon* [Mr Rose] *in for a review session" .* This was because the Control Team had reported that Mr Rose "*has put very onerous obligations on the type of work he is willing to do, locations, materials he is willing to work with etc.*" **pg 532.** He proposed: "*I think we need to have a formal sit-down listing all the demands he has made and the jobs he has refused. Ask him to confirm these are still the case and then confirm this will limit his opportunities. <u>We also need to decide if the limitations make it feasible for him to continue as a Franchisee</u>"* (my emphasis).

51. On 4 July 2024 Mr Donovan emailed Mr Clarke, identifying that Mr Rose had rejected 20% of the jobs offered to him since the introduction of SimPRO which enabled rejections to be monitored: **pg 544.** He went on to state that "*No reasons were given for these job rejections".* He noted that this rejection rate was "typical" to that before the introduction of SimPRO. Further that "*jobs seem to be rejected for no specific or typical reason, anecdotally, it has been noted due to the job not being close to preferred parts supplier or merchant, poor parking facilities, non-preferred location in general, or the type of work itself as reasons for previous rejections."* He also referred to "*a constant and repeat approach providing written estimates rather than agree a price and starting work straight away, which is becoming troublesome for customers in emergency situations"*.

52. On 12 July 2024 Mr Allen terminated Mr Rose's contract with immediate effect.

Mr Allen's evidence was that Mr Rose's behaviour was becoming difficult to manage and that he would park his van outside Pimlico's office in London. He recalled having to speak to him to ask him to "*put his feet back inside the van"* as he was making "*a bad impression*".

53. In a letter addressed to Mr Rose, he was reminded of the terms of the Confidentiality and Restrictions Deed: **pg 563.**

THE LAW

54. Section 230(3) of the ERA 1996 provides that a "worker" is:

> *"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 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"*.

Tribunals should apply the words of the statute to the facts of the individual case: **Bates van Winkelhof v Clyde and Co LLP** [2014] ICR 730 (CA) at [39]; **Sejpal v Rodericks Dental Limited** [2022] EAT 91 at [7]

55. It was common ground that Mr Rose did not work under a contract of employment and that therefore this was a subsection (3)(b) case (limb b). As set out by Taylor J in **Sejpal** at [10-11] this required consideration of four elements:

To be a worker:
(a) A must have entered into or work under a contract (or possibly, in limited circumstances… some similar agreement) with B; and
(b) A must have agreed to personally perform some work or services for B.

However, A is excluded from being a worker if:
(c) A carries on a profession or business undertaking; and
(d) B is not a client or customer A's by virtue of the contract.

56. In relation to limb (b) workers, in **Bates van Winkelhof**, Baroness Hale at [25] stated that the law distinguished between two kinds of self-employed people:

(a) those who are in business on their own account and enter into contracts with clients or customers (who are not limb (b) workers); and
(b) those who provide their services as part of a profession or business undertaking carried on by someone else (who are limb (b) workers).

Approach as to how to construe the contract?

57. If the contract is a commercial contract, or other non-employment contract, then ordinary contractual principles apply to its construction. In particular, a contract may only be implied if it is "necessary". Further, it is fatal to the implication of a contract "*if the parties would or might have acted exactly as they did in the absence of a contract*": **The Aramis** [1989] I Lloyds LR 213; **Todd v Swim Wales** [2018] EWHC 655 (QB)**.**

58. When considering an employment contract, this being a contract to perform work or services, a tribunal "*must be realistic and worldly wise*": **Autoclenz Ltd. v Belcher** [2010] IRLR 70 (CA) at [92]; **Autoclenz Ltd. v Belcher** [2011] UKSC 41 (SC) at [34]. This is because:

"*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":* [Lord Clarke at 35]*.*

In **Uber BV & Others v Aslam & Others** [2021] ICR 657 (SC) Lord Leggatt stated that whether a contract is a worker's contract within the meaning of the legislation designed to protect employees and other workers "*is not to be determined by applying ordinary principles of contract law*": [68]. The question is one of "*statutory interpretation not contractual interpretation*": [69]. That involves adopting a purposive approach [70]. It is inconsistent with the purpose of the legislation designed to provide workers' rights to treat the terms of a written contract as the starting point in determining whether an individual falls within the definition of a worker. This would "*reinstate the mischief which the legislation was enacted to prevent. It is the very fact that an employer is often in a position to dictate such contractual terms and that the individual performing the work has little or no ability to influence those terms that gives rise to the need for statutory protection in the first place"*: [76].

59. This means that where there is a dispute as to the genuineness of a written term in an employment contract, the focus of the enquiry must be to discover the actual legal obligations of the parties: **Autoclenz** (CA) at [53]; **Autoclenz** (SC) at [31]. A tribunal will have to examine all the relevant evidence including the written term itself, read in the context of the whole agreement. Evidence of how the parties conducted themselves in practice may be so persuasive that the tribunal can draw an inference that the practice reflects the true intentions of the parties. However, the mere fact that rights confirmed by a written contract were not in fact exercised does not mean they were not genuine rights (eg right to substitution): [19].

60. Similarly in **Uber** Lord Leggatt stated that in a case where the true intentions of the parties is a live issue, then it is necessary to consider all the circumstances of the case which may cast light on whether the contractual terms do truly reflect their agreement. That does not mean that the written contract should be ignored. What it does mean is that there is no legal presumption that a written document contains the whole agreement and no absolute rule that it represents the true agreement just because it has been signed: **Uber** [85]. Lord Leggatt

further stated that any terms which purports to classify the parties legal relationship or to exclude or limit statutory protections by preventing the contract from being interpreted as a contract of employment, or other workers contract, are of no effect and must be disregarded [85].

61. Finally, the tribunal does not have to find the whole of the written contract was or was not an accurate reflection of what had been agreed, it is open to the tribunal to conclude that some of provisions were and some not: **Partnership East London Co-operatives v Maclean** [2025] EAT142, HHJ Auerbach at [32]

Whether there is a contract: identifying the true parties to the contract

62. The "necessary first step" is to identify whether there was a contract between the claimant and the respondent: **Catt v English Table Tennis Association Ltd** [2022] EAT 125, Eady P at [46].

63. In **Uber** the issue was whether there was a contract at all between Uber and the mini cab drivers. Lord Leggatt, responding to Uber's submission that the written agreements were consistent with how the tripartite relationship operated in practice, stated that to treat the written agreements "*as the starting point in classifying the parties' relationship, and as conclusive if the facts are consistent with more than one possible legal classification, would in effect be to accord Uber power to determine for itself whether or not the legislation designed to protect workers will apply to its drivers":* [77]. This was why the relative bargaining power of the parties in the employment context was relevant and the reason why tribunals should look beyond the terms of any written agreement to ascertain the parties true agreement: [78].

64. If the party to whom the services are provided contracts, not with the individual who performs them, but with a third party such as a limited company or partnership, then the individual cannot be the worker or the employee of that party: **Maclean** at [25]. However, the mere fact that there is a written contract with a third party is not determinative. It all depends on the facts. I agree with Mr Milsom's submissions that the construction of the contract, and consideration of the reality of the situation, applies to the identification of the parties to the contract as well as the terms of any contract if established. The parties referred to a number of cases, of which I consider the following to be the most relevant:

    64.1 **Catamaran Cruisers Ltd v Williams & Ors** [1994] IRLR 386 (EAT), which concerned an employee who formed a limited company to supply his services through that company. The tribunal found that the limited company was "*Mr Williams under another name*" and this finding was upheld by the EAT. In so doing, Mr Tudor Evans J stated that there is "*no rule of law that the importation of a limited company into a relationship such as existed in this case prevents the continuation of a contract of employment. If the true relationship is that of employer and employee, it cannot be changed by putting a different label upon it"*.

64.2 **Protectacoat Firthglow Ltd v Szilagyi** [2009] ICR 835 (CA) which concerned the supply of services through a partnership of two persons, the claimant and his assistant, which was a precondition of entering into a contract with the company. The CA held that the contract was with the claimant not his partnership. The fact that a document described a particular relationship (in that case partnership) was not the test for the existence of that relationship. The court must look at the substance and not the label: [60-61].

64.3 **Plastic Omnium Automotive Limited v Horton** [2023] EAT 85 (EAT), which concerned the supply of a project manager's services through his personal services company (PSC). The EAT held that the contract was with the PSC and not the claimant. The tribunal had found that the contract was an accurate reflection of the parties' intentions [59]. Other factors included: (a) that the claimant had been offered an employment contract and refused; (b) that for a while his partner had been a shareholder of PSC, did work for the PSC and was paid a salary and (c) that the PSC offered to provide more staff to the respondent if the latter needed or wished [62]. The EAT held that the arrangement worked to the claimant's benefit. The fact that the claimant was fully integrated into the respondent's workplace was not a relevant consideration.

64.4 **Maclean**, which concerned a nurse working for a provider of healthcare services. She set up her company at the behest of the respondent as a vehicle for payment. The EAT held that the contract was with the claimant and not her limited company [69].

Whether there is a contract: Mutuality of Obligations

65. A corollary of whether there is a contract at all, is whether there is mutuality of obligations. That is, there must be a legally enforceable obligation owed by the parties such as to constitute the *"consideration from each party necessary to create the contract"*: **Quashie v Stringfellows Restaurants Ltd** [2012] IRLR 99 at [10]; **Nursing and Midwifery Council v Somerville** [2022] ICR 755 (CA) at [45]. This is referred to as mutual obligations.

66. A single engagement can give rise to a contract of employment if the work which has been offered is in fact done for payment. The courts have found that the fact that a claimant could withdraw from any engagement did not undermine the claim that he was a worker in relation to each assignment: see eg **Somerville** at [55]. In **Pimlico Plumbers Ltd v Smith** [2018] ICR 1511 (SC) it was not disputed that there was a contract between Mr Smith and Pimlico whilst he was working on each assignment: [36].

67. In addition, the periods between engagements may give rise to an overarching contract, and it is a matter of fact whether the obligations are such as to bring it within the definition of a worker contract. **Smith** (SC) upheld the tribunal's finding that there was an umbrella contract between Mr Smith and Pimlico: [41]. On the facts of that case, the written contract stated that Pimlico was under no obligation to offer work and Mr Smith was under no any obligation to accept

work, whereas the manual stated that normal working hours was a 5 day week and a minimum of 40 hours per week. Lord Wilson JSC, in a unanimous decision, concluded that Pimlico's contractual obligation "*was to offer work to Mr Smith but only if it was available*" and Mr Smith's contractual obligation was "*to keep himself available to work for up to 40 hours on five days each week on such assignments as Pimlico might offer to him"* [40]. This contractual obligation was without prejudice to Mr Smith's right to decline a particular assignment and did not preclude Pimlico from electing not to insist on compliance.

Personal performance and substitution

68. If there are mutually enforceable obligations that give rise to a contract between the claimant and respondent, then the next question is whether the obligations fall within the scope of a worker's contract, with reference to the statutory test.

69. The sole test is the obligation of personal performance as set out in the statute: **Smith** (SC) at [32]. It may be helpful to consider whether the "dominant feature" (or even "dominant purpose" although Lord Wilson JSC suggested that there were difficulties with this) of the contract was personal performance. However, Taylor J In **Sejpal** suggested that post Uber this question required greater focus on the statutory provision, and that "*it might even be argued that personal service need not be the predominant purpose of the agreement, provided that the true agreement is for the provision of "any" personal services as required by statute*", although Taylor J declined to determine this: [32].

70. Having conducted a review of the case law, in the pre-Uber case of **Pimlico Plumbers Ltd v Smith** [2017] ICR 657 (CA) the following principles as to the requirement for personal performance were identified [84]:

    (i) An unfettered right to substitute another person to do the work or perform the services is "*inconsistent with an undertaking to do so personally".*
    (ii) A conditional right to substitute another person *"may or may not be inconsistent with personal performance depending upon the conditionality".* It will depend on the precise contractual arrangements and the nature and degree of any fetter i.e. "*the extent to which the right of substitution is limited or occasional".*
    (iii) A right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance.
    (iv) A right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance.
    (v) A right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance.

    (Note: (iii) to (v) were given as examples only).

Again Taylor J in **Sejpal** suggested, without deciding, that post-Uber it is arguable that even where if there is an unfettered right of substitution, it may be possible to conclude that there is still an obligation of personal performance: [32].

71. On the facts of **Smith** (SC) there was no express right of substitution under the written contract. However, the tribunal found as a fact that Mr Smith did have a limited right of substitution in that he was permitted to arrange for work to be done by another Pimlico engineer. Lord Wilson JSC noted that the substitute had to come from the ranks of Pimlico engineers, in other words from those bound to Pimlico's "*identical suite of heavy obligations"*. Therefore it was "*the converse of the situation in which the other party is uninterested in the identity of the substitute, provided only that the work gets done."* [34]. He declined to determine whether a wider provision (permitting substitution of a non Pimlico engineer "with prior permission" would have been fatal to Mr Smith's claim [27].

72. On the facts of **Sejpal**, the right of substitution was not unfettered, for a number of reasons including the express requirement that the replacement must be acceptable to the respondent: [59].

Client or customer of any profession or business undertaking

73. This requires consideration of first whether a claimant carried on a profession or business undertaking and if he did, he would only be excluded from worker status if the respondent was his client or customer: **Sejpal** [10 and 61-62]. Since this is an exemption to the statutory provision which provides protection to workers, I accept Mr Milsom's submission that the exemption is to be construed narrowly. Further since it is an exemption the burden of proof is on Pimlico.

74. When considering this issue there are a number of analytical tools that can assist a tribunal as indicators of status:

    74.1 The extent of integration into the workplace: The EAT in **Cotswolds** distinguished between a purported worker who actively marketed their services as an independent person to the world in general (who would have clients or customers) and a worker who is recruited by the principal to work for that principal as an integral part of the principal's operation: [39]. However in **Uber** the minicab drivers (who used their own cars) were free to work for other companies yet were still found to be workers due to the level of control over their work. Similarly in **Hospital Medical Group Ltd v Westwood** [2013] ICR 415 (CA), it was held that a GP was an integral part of HMG's undertaking "*even though he was in business on his own account*": [19]. Maurice LJ given judgment stated that being in business on ones own account was not an excluded category; parliament had provided "*a more nuanced exception*". He stated it was counter intuitive to see HMG as the GP's client or customer since he had contracted specifically and exclusively to carry out hair restoration surgery on behalf of HMG.

74.2 The extent of control / subordination over working conditions and remuneration: Whilst this can be a useful tool, the amount of day-to-day control that the employer has over the individual will vary depending on the nature of the work involved. In some areas of work an employer has little or no practical control over how the work is done since it requires individual judgement e.g. a referee during a football match: **Commissioners for her Majesty's Revenue and Customs v Professional Game Match Officials** [2021] EWCA Civ 1370 (CA). On the other hand a small business may be genuinely an independent business yet wholly dependent on, and subordinate to, the demands of a key customer: **Bates van Winkelhof** at [39].

75. Whilst such tools may assist they are not of universal application and are no substitute for applying the words of the statute: **Bates van Winkelhof** at [39]; **Sejpal** at [7].

76. Considering the facts of **Smith** (SC)**,** Lord Wilson JSC noted the following: (a) he was entitled to reject any particular offer of work, (b) was free to take outside work, (c) Pimlico did not supervise or otherwise interfere with the manner in which Mr Smith conducted his work and (d) there were financial risks for Mr Smith in that he was bound by the quote that he gave for the work given to the customer, he only got paid if the customer paid and he was responsible for remedying or paying for works if the customer complained: [47]. Lord Wilson JSC then went on to identify at the following features of the contract which "*strongly militated"* against recognition of Pimlico as Mr Smith's client or customer [48]:

76.1 The "tight control" reflected in the requirement to wear the branded Pimlico uniform; drive its branded van to which Pimlico applied a tracker; carry its identity card; and closely follow the administrative instructions of its control room.

76.2 The "severe terms" as to when and how much it was obliged to pay him, on which it relied, "*betrayed a grip on his economy inconsistent with his being a truly independent contractor*".

76.3 A "suite of covenants" restrictive of his working activities following termination.

DISCUSSION AND CONCLUSION

Relevance of Pimlico v Smith

77. Mr Milsom submitted that **Smith** is "dispositive" in Mr Rose's case. I do not agree, since there are some potentially significant differences between the two cases which require consideration, in particular the introduction of a third party into the contractual arrangement and payment to that third party rather than the engineer. There is also a change in the wording of the substitution clause, and some other changes which I consider below.

78. On the other hand, I do accept that the business model has remained largely the same. During the period that Mr Rose was employed, Pimlico continued to market itself to its customers as a trusted brand with customers being unaware that the service was supplied by sub-contactors. Engineers are still self-employed and responsible for their own tax and NI, providing their own tools and materials, and are personally liable. They are still required to wear the Pimlico uniform, drive a Pimlico van with a tracker, use Pimlico ID cards, and Pimlico mobile phone. They are still required to adhere to standards of behaviour and appearance, albeit there is no longer a manual but just a page of do's and don'ts. Many of the contractual terms have not significantly changed, for example the clauses on mutuality of obligations and payment (both in relation to the amount and when). The clauses on restricted covenants are identical except that the time period had been reduced from 12 months to 6 months. In addition, the requirement to not to be *"engaged, concerned or involved in any capacity with any business which is, or intends to be, in competition*" with Pimlico's business has been removed and replaced by a more general requirement not to act in any capacity in relation to all the restrictive covenants, and therefore in effect has been extended from 3 months to 6 months.

Whether there was a contract at all between Mr Rose and Pimlico

79. Mr Stephens' primary position was that there was no contract between Mr Rose and Pimlico, because the express written contract was between JDM and Pimlico. He submitted that JDM was a separate legal personality and had entered into a commercial relationship with Pimlico to supply the services of Mr Rose. Therefore the contract should be construed in accordance with ordinary contractual principles applied to commercial contracts. He further submitted that the parties dealings with each other was consistent with that contractual relationship. Mr Rose benefitted financially from that relationship because as a company JDM could off set costs of sale, VAT expenses and was registered as CIS. Therefore a contract could not be implied out of "necessity" with reference to common law cases on contractual construction. In effect Mr Stephens' position was that the purposive approach and statutory interpretation, required under **Autoclenz** and **Uber,** did not apply since this was a commercial contract not an employment contract.

80. Mr Milsom submitted that **Autoclenz** and **Uber** are as relevant to the identification of the parties to a contract as to any terms of that contract. That the reality of the situation was that the express contract was between Pimlico and Mr Rose and not between Pimlico and JDM.

81. I find that Mr Rose's contract was an employment contract not a commercial contract. This is because:

    81.1 The Agreement between Pimlico and JDM was to provide Mr Rose's services to Pimlico and its customers in return for payment for those services.

81.2 Further, the rights that Mr Rose is seeking to enforce are statutory rights not contractual rights, therefore when considering this issue I am to adopt a statutory interpretation rather than a contractual one. In my view that is sufficient to answer the question.

81.3 Going back to the wording of the statutory provision, there is nothing in that wording that limits worker status to those entering into contracts as individuals rather than through a third party such as a limited company to provide personal service. Indeed the statutory test for worker allows for the possibility that a claimant may be carrying out a profession or business undertaking, but is still a worker if the respondent is not their client or customer.

81.4 In **Plastic Omnium** if the mere fact that there was a written contract between the respondent and the personal service company had been determinative, the EAT would have said so. What the EAT in fact did was consider the reality of the situation and on the facts of that case concluded that the reality was consistent with the written contract. In **Maclean** the EAT found that despite there being a written contract between the respondent and a limited company, the contract was with the claimant not her limited company.

82. Therefore when determining who are the parties to the contract, I need to consider the reality of the situation. That does not mean that I ignore the fact that the express contract was between Pimlico and JDM, but it would also be wrong to regard that as conclusive. Since the identity of the parties is a live issue I am required to consider all the circumstances.

83. Mr Stephens submitted that the reality of the situation was consistent with the terms of the contract being a commercial contract, with reference to the case of **Plastic Omnium.** However, even if that is the case, as Lord Leggatt stated, the terms of the written agreement are not conclusive if the reality of the situation is consistent with more than one possible legal classification: **Uber** [77] (referred to in paragraph 63 above). I note that in **Plastic Omnium** not only was the contract found to be an accurate reflection of the reality on the grounds and the parties' relationship, but it also worked to the claimant's benefit. When offered the possibility to become an employee he declined. Further, his personal service company employed a member of staff, and had offered the respondent the services of another [62]. I accept Mr Stephens' submission that **Maclean** is particular on its facts, as indeed are all the cases relied upon by both parties.

84. I consider the relevant facts in Mr Rose's case to be:

<u>The terms of the written contractual documents.</u>

85. The Agreement was expressed to be between Pimlico and JDM and was signed by Mr Rose on behalf of his limited company. It set out JDM's obligation to provide Mr Rose's service, the payment of fees for that service, indemnified Pimlico against any liability for that service, confirmed that JDM was entering

into the agreement as an independent contractor and that it was an entire agreement. These are all factors that support Pimlico's case that the contract was with JDM and not Mr Rose. I do not consider the fact that the Agreement was to be counter-signed by Pimlico's HR manager to be a significant inconsistency.

86. On the other hand, I consider the personal nature of the other contractual documentation to be much more consistent with the contract being between Pimlico and Mr Rose than between Pimlico and JDM:

86.1 The Side Letter, which was drafted by Pimlico on Pimlico headed paper, was in the first person and signed by Mr Rose personally. All the obligations were entered into by Mr Rose personally, including a warranty that he would not claim employee / worker status and agreement to indemnify Pimlico against any such claim. Pimlico would not need Mr Rose to give such a warranty to them if this had just been a commercial agreement between two companies.

86.2 The Confidentiality and Restriction Deed was addressed to JDM but most of the clauses referred to Mr Rose personally ("you") as opposed to "your personal services company", and again was signed by Mr Rose in a personal capacity. The obligation not to provide services to customers or prospective customers was one placed upon Mr Rose personally, in addition to JDM. The restricted covenants (clauses 1.4 and 1.5), confidentiality and property clauses (clauses 2.1 to 2.6) were all undertakings placed upon Mr Rose personally, and not JDM.

86.3 The Vehicle Hire Agreement, Equipment Inventory and Company Mobile Phone and iPad Agreement and Company iPad Agreement were all addressed to, and signed by, Mr Rose personally.

87. Further, I take into account that the written agreements were not between equals: the contractual documents were all drafted by Pimlico, neither JDM nor Mr Rose had any say over the wording. Indeed when Mr Rose requested a higher indemnity insurance or to use his own van this was refused. Had it been a contract between equals then that would have pointed towards a commercial contract. I accept that the parties being unequal is not determinative; parties to commercial contracts may have unequal bargaining powers, for example a small business selling to a supermarket. However the relative bargaining power of the parties is a significant factor to take into account. It provides Pimlico with the power to determine for itself what legal label to apply to the relationship. That self-evidently runs the risk of allowing Pimlico to apply a legal label with the purpose of avoiding legislation designed to protect workers.

Separate legal entity

88. I accept Mr Stephens' submission that JDM was a separate legal entity and an active trading company that pre-existed the contract with Pimlico. It filed annual tax returns, VAT returns, registered for CIS and employed an accountant. Further, trading through JDM provided Mr Rose with a financial advantage since

he could offset his expenses against taxable profits, there was a case-flow benefit in avoiding tax being deducted at source each month and he could be paid dividends which were not subject to NICs. I accept that these are relevant considerations.

89. However, I do not consider the fact that Mr Rose had a pre-existing business to be fatal to his case. This was because Pimlico required all its engineers to have limited companies in order to contract with them. This is different from the position of the claimant in **Plastic Omnium**, where it was his choice to contract through his limited company. Had Mr Rose not already had a limited company then he would have been required to create one. As Mr Chapman admitted in evidence, engineers were not provided with the option of contracting with Pimlico personally. There was no suggestion that the contractual wording was any different depending on whether the engineer had a pre-existing business or one established for the purpose of entering into a contract with Pimlico. In my view it would be inconsistent for worker status to be conferred on those engineers that did not have pre-existing businesses and not on those who did. The statutory test does not make such a distinction, and I do not consider it appropriate for me to do so.

90. I took into account that Mr Rose was JDM's sole director, shareholder and employee. Therefore although JDM was a separate legal entity it was in reality Mr Rose. I consider it particularly telling, that when Pimlico wanted to change the terms of the contract the email was sent to engineers personally and not their limited companies, nor did it refer to their limited companies. Further the engineers were informed that it they did not sign then they would be deprioritised for work.

91. I do not consider Mr Stephens' submission that JDM could have employed other engineers to be a realistic option. JDM (and Mr Rose's previous company) had never employed anyone other than Mr Rose. It was merely a tax efficient vehicle to provide his plumbing and installation services. There was no evidence that he intended it to expand. Further there is no evidence that Pimlico intended it to provided engineers other than Mr Rose. The Agreement expressly provided for the provision of the services of Mr Rose (clause 2.2.2). Whilst it envisaged that JDM could provide "an alternative engineer", it is clear that the term was conditional on clause 2.5, which limited the provision of an alternative engineer to that of a substitute. The terms of the contract did not state that JDM could provide more than one "engineer" at any one time. In addition there were restrictions on the right to substitute that I address below.

92. I do not consider that the fact that Pimlico paid JDM not Mr Rose for the jobs done to be significant. Contrary to clause 3.2 of the Agreement JDM did not invoice Pimlico weekly for the work done, instead Pimlico would pay Mr Rose in accordance with the jobs recorded by submission of a timesheet from Mr Rose. However, even if JDM had been required to submit weekly invoices, as was envisaged by the Agreement, this would not have been a significant factor if the invoices were Pimlico generated and Pimlico determined.

93. I do not put any weight on the HMRC classifying Mr Rose as a "*worker… working on a business or business basis*". The classification of workers into employed and self employed by the HMRC is not the same as in employment law, and, as identified by Baroness Hale in **Bates van Winkelhof**, limb (b) workers are self employed. Further I note on the facts of **Maclean** a similar classification was made and disregarded by the tribunal: [46].

94. Therefore I do not consider that the fact that Pimlico's written contract was with JDM, a separate legal entity, prevents a conclusion that Mr Rose was the true party to the contract. He was not given any choice and his limited company was in effect himself.

How the parties conducted themselves in practice

95. Crucially, I consider that how the parties performed the contract in reality was more consistent with the express contract being between Pimlico and Mr Rose and not JDM:

95.1 Mr Rose was recruited by way of an advert in TotalJobs and interviewed. I accept that the advert referred to the post being self-employed and the successful candidate being a "business owner", on the other hand TotalJobs is an employment recruitment agency. In any event the checks and references conducted by Pimlico were on Mr Rose personally not his company. He was not asked to provide any documents in relation to JDM. The documents that he was asked to provide were all personal to him including training certificates, proof of NI and proof of address. On being recruited he is congratulated and welcomed to the "team".

95.2 The requirement that Mr Rose make himself available Mondays to Fridays between 8am to 6pm was made with him personally at his interview not with JDM. I have also found that he was required to inform the control room in advance if he was not available, again this requirement was made with Mr Rose personally.

95.3 Mr Rose received payslips addressed to him personally. Whilst Pimlico did move to invoices in June 2024, these were Pimlico generated invoices to the customers, with customers still making payment to Pimlico. That did not alter the relationship, Mr Rose was still being paid by Pimlico, albeit into the JDM bank account rather than his personal account. I accept Mr Chapman's evidence that the reason the payslips were addressed to Mr Rose and not his company was due to the limitations of the Sage 50 payroll system, but that does not explain why Pimlico was using payslips at all.

95.4 Mr Rose presented to Pimlico customers as a Pimlico (not JDM) worker, wearing Pimlico uniform, using a Pimlico van, equipment and email address. He was subjected to Pimlico pay rates and deductions, and required to take out Pimlico insurance. Pimlico determined how complaints would be remediated.

95.5 Mr Rose was subjected to Pimlico's (not JDM's) training and internal rules and policies including, dress code, good working practices, good behaviour and conduct. As the email on smoking made clear, a breach of an internal rule or policy could potentially lead to a termination of the contract.

95.6 When Mr Rose became difficult to manage he, not JDM, was dismissed, the dismissal letter was sent to him personally and reminded him of the terms of the Confidentiality and Restrictions Deed.

95.7 Correspondence during the period of his engagement was to Mr Rose personally using his Pimlico email address. That included the correspondence about contractual changes.

96. Therefore, I conclude that in reality the true contract was between Pimlico and Mr Rose. I consider that the requirement that Mr Rose contract with Pimlico through a third party limited company was an attempt to create a buffer in order to avoid liability for workplace rights. That is the very mischief that the statute is intended to address.

Mutuality of obligations

97. It was not disputed that there was a contract containing legally enforceable obligations owed by the two parties to that contract. Therefore there appeared to be no dispute that there was mutuality of obligations in relation to that contract. Mr Stephens did not address me on this and Mr Milsom referred to it as a "red herring".

98. In **Smith** it was not disputed that there was a contract between Mr Smith and Pimlico whilst he was working on each assignment: [36]. In addition the CA and SC upheld the tribunal's decision that there was an umbrella contract: [41].

99. Since Mr Smith's case I do not consider that there has been any significant change in the manner in which the Pimlico contract operates in practice. In relation to each job (assignment), there was clear mutuality of obligations. Mr Rose agreed to do the work in return for payment by Pimlico for that work. I also consider that there was an umbrella contract which covered the periods in between jobs for the reasons set out below.

100. The written contractual terms in Mr Rose's case was the same as that which applied to Mr Smith. Namely Pimlico were under no obligation to offer work and Mr Rose was under no obligation to accept work (clause 2.3). Further, like **Smith**, Mr Rose was permitted to do other work as long as it was not the provision of services to any Pimlico customer or prospective customer (Agreement clause 2.8 and Side Letter clause 1.1). I accept that some engineers had arrangements whereby they worked part of the year, part of the month and potentially part of the week. However, I have found as a fact that was not the agreement that Mr Rose entered into at his interview. His agreement was Mondays to Fridays 8am to 6pm. This agreement was similar

to that which applied to Mr Smith which was that he work 5 days pw for a minimum of 40 hours. The only difference was that the agreement with Mr Smith was in writing (in a manual) whereas the agreement with Mr Rose was made orally at the interview.

101. Further, I accept that some engineers did not work exclusively for Pimlico and continued to run their own business or take on other work. On the facts it was not realistic for Mr Rose to continue his own business due to Pimlico's insistence that he be available Mondays to Fridays 8am to 6pm and he recognised this at the time that he entered into the contract. In particular, the requirement that he be based in central London (NW3), wear a Pimlico uniform and drive a Pimlico van meant that it was not practical for him to attend a non-Pimlico customer during the periods that he was available for Pimlico work. However, I am prepared to accept that theoretically he could have continued his own business, and that some engineers did.

102. What I do not accept is Mr Stephens' submission that engineers were under no obligation to make themselves available at all. I consider that in reality engineers were required to make themselves available for the periods agreed with them, unless they informed the control room sufficiently in advance that they would not be available. Mr Chapman stated that on any given day 20-25% of engineers were unavailable, that means that 75-80% were available. I consider that for the business model to work; Pimlico required the majority of its 60 plumbers to be available on any given day. It is not realistic to suggest that Pimlico could operate without knowing, from one day to the next, whether it had any or sufficient plumbers available to offer to customers requiring their services. The need to ensure a steady supply of plumbers in reality meant that Pimlico would need to be able to control whether and when they were available and when they were unavailable.

103. Finally, I accept that the obligation was only to make himself available and it did not require Mr Rose to accept any assignment offered to him. On the evidence he did refuse a number of assignments. However it is also clear from the internal documentary evidence that in reality this right was not unfettered. Pimlico clearly monitored how many assignments Mr Rose rejected and the reasons for his rejection (see email 4 July 2024). Further the internal correspondence suggests that Mr Rose's attempt to impose territorial restrictions was not acceptable and that Pimlico were considering termination of his contract, see emails dated 17 May 2023, 19 December May 2023 and 18 June 2024 stating: "*you will make yourself available for work in the London area", "franchisees are not able to set specific territorial areas", "not the basis of our partnership"* and *"we need to decide if the limitations make it feasible for him to continue"*. I conclude from this that once an engineer had made themselves available, they were required to have a good reason for turning down an assignment and that too many rejections could result in the penalty of the contract being terminated. Not only is this conclusion supported by the internal documentary evidence but I consider that in order for the business model to work, Pimlico had to expect its engineers to generally accept the work given. Too many rejections would impact on its ability to provide a quick and efficient service to customers. I consider that the position was not dissimilar to

that of the Uber drivers who were free to reject any job, but the rate of acceptance was monitored and they would be logged off the App if there were too many rejections.

104. Using a similar formulation to that of the SC in **Smith**, I consider that the terms of the umbrella contract between the parties was a contractual obligation on Mr Rose to keep himself available to work on Mondays to Fridays 8am to 6pm on such assignments as Pimlico might offer to him. The contractual obligation on Pimlico was to offer work to Mr Rose if it became available.

Was there personal service

105. In my view the dominant feature of the contract was the provision of Mr Rose's personal service. In the Agreement, he was identified by name as the provider of services to Pimlico.

106. Mr Stephens submitted that the right to substitution, provided under the Agreement, meant that Mr Rose was not required to provide the service personally. Mr Rose's evidence was that he did not think he had the right of substitution and / or he did not exercise that right. That is irrelevant, the issue is whether he had the contractual right to substitute, not whether he in fact used it.

107. In **Smith** the right to substitution was limited to another Pimlico engineer. In Mr Rose's case the written Agreement included the possibility that the substitute could be a non-Pimlico engineer with "prior approval" of Pimlico. Therefore the contract did not provide an unfettered right of substitution. In order to be approved, Pimlico would check the substitute's qualifications, complete any necessary vetting such a DBS checks and making sure they were properly employed and insured. The purpose of these checks was to protect safety of customers and the reputation of the brand by ensuring that engineers were trustworthy and properly qualified to complete the work. Mr Stephens submitted that if an engineer's limited company had more than one employee it would be to their benefit to provide the substitute. Pimlico did not provide any evidence of this occurring in practice. It seems to me that there would be no incentive to do this since the substitute would still need Pimlico's prior approval. In such circumstances it is difficult to envisage why a substitute would choose to be supplied by a third party's company rather than join Pimlico on their own account. Indeed it was difficult to envisage a situation where a substitute would be necessary at all. It was not disputed that engineers could reject assignments, even on days that they had stated that they were available. In such circumstances Pimlico would just contact the next engineer on the list. Given that the engineer was not required to provide a substitute, it would be more onerous for them to take on that role than allow Pimlico (via its control room) to do so. That is the common sense reality of the situation.

108. Therefore, I consider that the actual contractual right was the right to substitute with another Pimlico engineer. Whilst the wording of the substitution clause has been changed, I consider the reality of the situation has remained the same as it was in **Smith**. Therefore I find that there was personal service for the same

reasons as in **Smith**. Even if my factual finding is wrong and the right to substitute was extended to non-Pimlico engineers, it is still a fettered right in that Mr Allen accepted that needed to be someone who was "pre-approved". Given that post-Uber I am required to apply the statutory test, in my opinion a right of substitution which was subject to prior Pimlico approval, is not inconsistent with Mr Rose's claim that he was obliged to provide personal service. Indeed, even if there had been an unfettered right to substitution, the reality of the situation was that jobs were done by the engineers personally, and that this was the expectation of the parties when entering into the contract. That was the reason why Mr Rose was interviewed to determine whether he would be permitted to join "the team" and why he is personally named as the engineer to provide the services in the Agreement.

109. Mr Stephens' submission that an engineer was free to use a third party company offering a different trade to that offered by Pimlico (for example MagicMan), without prior approval, does not assist Pimlico. As Lord Wilson JSC commented in **Smith,** in those circumstances the engineer continued to do the basic work and was not to be regarded as having substituted the specialist to perform it [24].

Was the claimant carrying out a profession or business undertaking

110. Mr Stephens submitted that Mr Rose had his own independent business, JDM, which pre-existed the contract with Pimlico. As was made clear in **Westwood** that is not a barrier to worker status since the statutory exclusion does not apply merely because he was in business on his own account but only if Pimlico is a "client or customer" of Mr Rose's profession or business undertaking.

111. Mr Stephens further submitted that Mr Rose was not required to work exclusively for Pimlico and was free to take on his own private work. Mr Milsom accepted that this was the term of the contract but stated that in reality it was not possible for Mr Rose to continue with his private work. This was because Pimlico required him to work Mondays to Fridays 8am to 6pm, and because he was required to use the Pimlico branded van and uniform, this restricted his ability to attend his own customers during periods when he was required to be available to Pimlico. Pimlico have provided examples of other contractors who continued private work but these were either working part years or part weeks. That is no different from someone on a part-time employment contract.

112. On the facts of Mr Rose's case I do not find that he was carrying out a profession or business undertaking on his own behalf. He had sold his van and simply did not have time outside his contract with Pimlico to carry on his own business. He accepted that this was his choice rather than a requirement under the contract. However even if he had been carrying on his own business undertaking that is only the first part of the exclusion. The GP in Westwood had his own business, business cards and marketed himself to the world and yet would found to be a worker.

Was Pimlico a customer or client of Mr Rose's business?

113. Where Pimlico's case falls down is the suggestion that Pimlico was a customer or client of Mr Rose's business.

114. I consider it counter intuitive to describe Pimlico as Mr Rose's client or customer. In particular:

114.1 None of the written contractual documents describe Pimlico as Mr Rose's customer or client.

114.2 He was fully integrated into Pimlico's business model. When undertaking a Pimlico job he had to comply with Pimlico's uniform, use Pimlico's van and ID, present himself to Pimlico's customers as a plumber from Pimlico. In particular, Mr Rose was not permitted to market himself to Pimlico's customers (or present himself as anything other than a Pimlico engineer). Further he was restricted from providing services to Pimlico's customers and prospective customers for the duration of his contract and 6 months post termination. Therefore he had no means of building up his own business, but instead was helping to market and build up Pimlico's business. Like the model described in **Uber** by Lord Leggatt at [101], it was designed to provide a standardised service to customers in which the engineers were perceived as substantially interchangeable and from which Pimlico rather than the individual engineers obtained the benefit of customer loyalty and goodwill. Engineers had little or no ability to improve their economic position through professional or entrepreneurial skills.

114.3 Mr Rose had no control over the terms of his written contract and limited control over how the contract operated in practice. He had no control over what work was offered to him. Indeed when he sought to impose territorial limits he was informed that he was not permitted to do so. Whilst he was free to accept or reject jobs, this was not an unfettered right for the reasons stated above, and what he did was monitored. He could determine how he carried out his work and how long a job would take, but had no control over Pimlico's fee structure and deductions, how to deal with late payments and complaints. As the SC recognised in **Smith** this betrayed a grip on his economy inconsistent with his being a truly independent contractor. Further like **Smith** he was subjected to a suite of covenants restricting his working activities following termination. This was inconsistent with him being in a business on his own account.

115. Therefore, Mr Rose was not excluded from being a worker since even if he did carry on a profession or business undertaking, Pimlico was not his client or customer by virtue of the contract.

CONCLUSION

116. I conclude that Mr Rose was a limb (b) worker under section 230(3) of the ERA 1996 and equivalent provisions in the NMWA 1998 and NMW 1998.

This judgment has been approved by:

Employment Judge **Hart**
Date: **9 December 2025**

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
12 December 2025

……..

...…..

FOR THE TRIBUNAL OFFICE

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/