



EMPLOYMENT TRIBUNALS

Claimant: Miss T. Mlambo

Respondents: (1) Kokio Health Care Ltd
(2) Mr N. Khumalo

PRELIMINARY HEARING IN PUBLIC

Heard at: Bury St Edmunds (by videolink (CVP)) **On:** 28 November 2025

Before: Employment Judge McNeill KC (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr Rahman, Legal Consultant

REASONS FOR JUDGMENT SENT TO THE PARTIES ON 15 DECEMBER 2025 – requested by the Respondent on 23 December 2025

Introduction

1. On 28 November 2025, this case was listed for a public preliminary hearing to determine the Claimant's employment status at the times relevant to her claims. The Claimant contended that she was an employee of the Respondents. The Respondents contended that she was a self-employed contractor, who operated through her own company, Tantú Solutions Ltd; that she was in a joint business venture with the Respondents; and that the venture terminated by mutual agreement. The Respondents contended that the Claimant worked not for the Respondents but for franchisees of the First Respondent. The Second Respondent is a director of the First Respondent.
2. The Claimant's claim relates to a period from about 8 June 2020 to 5 or 6 February 2024. She brings claims for unfair dismissal, direct sex discrimination, sexual harassment, victimisation and unauthorised deductions from her pay.

Procedural issues

3. At a preliminary hearing for case management on 19 August 2025, at which this preliminary hearing was listed, various orders were made, including that the parties should exchange witness statements for this hearing by 10 November 2025. The Respondents did not provide any witness statement until the morning of 27 November 2025, the day before this hearing, when a witness statement from the Second Respondent, addressing the issue of employment status, was provided. The Claimant had prepared and provided in good time her witness evidence and a 285 page file for the hearing, including documents provided by the Respondents.
4. The Claimant objected to the admission of any witness evidence from the Respondents. She had had insufficient time to prepare to cross-examine the Second Respondent and would be prejudiced if the Second Respondent was permitted to give evidence. The witness statement was provided very late and the only reason put forward by the Second Respondent was that he had not realised he needed to produce a statement, in spite of a clear direction from the Tribunal that he should do so. Taking into account the overriding objective of dealing with cases justly, I considered that it would be disproportionate to adjourn the hearing and (with one exception) that the balance of justice was against permitting the Second Respondent to give evidence.
5. The exception was that there was some potentially highly relevant evidence in a proposal submitted by the First Respondent to Ofsted. That evidence appeared on its face to be consistent with the Claimant's case that she was an employee and could have suggested that the Respondents were misleading Ofsted if the Respondents were correct in their contention that she was not an employee. I determined, in the interests of justice, that the Second Respondent should be given an opportunity to explain that document. His evidence in chief was to be limited to that issue. In the event, the Claimant cross-examined him more broadly on matters relevant to her case and I took his answers into account when considering my judgment.
6. I heard oral evidence also from the Claimant and from Ms Patience Chigodora, who was recruited by the Claimant to work for the First Respondent. I also read witness statements from other individuals who had worked with the Claimant. As those witnesses did not attend for cross-examination, I gave little weight to their statements.

Legal Principles

7. Section 230(1) of the Employment Rights Act 1996 (the ERA) provides that an employee is "an individual who has entered into or works under (or where the employment has ceased, worked under) a contract of employment." The Claimant can only pursue a claim for unfair dismissal if she meets this definition.
8. Section 230(3) of the ERA provides that a worker is an individual who works under a contract of employment or "any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to

the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.” This definition is relevant to the Claimant’s claim for unauthorised deductions from her pay.

9. Section 83(2)(a) of the Equality Act 2010 (the EqA) provides that “employment” means “employment under a contract of employment, a contract of apprenticeship or a contract personally to do work”. This definition is relevant to the Claimant’s EqA claims.
10. In deciding whether an individual is an employee working under a contract of employment, a number of different factors may be relevant including, importantly, mutuality of obligation (which is essential to any contract); an obligation to provide personal service; and control. The existence and terms of a written contract of employment may be important. Other relevant factors may be whether and how the individual is integrated into an organisation’s business; how an individual is paid, whether by PAYE, or on invoicing possibly from their own business. Overall, the Tribunal should look at the reality of the relationship.

Findings of Fact

11. The First Respondent company at the relevant times ran a franchise. Franchisees of the First Respondent managed houses in which supported accommodation was provided for young people in local authority care. I was told at the hearing that the First Respondent company was still active but that it was no longer operating.
12. The Claimant started to work for the First Respondent in March 2020. She was recruited by the Second Respondent, who she already knew, to work for the Second Respondent as a support worker. She worked under the direction of the Second Respondent and Mr Brian Mutare.
13. On 30 March 2020, the Claimant asked the Second Respondent for a reference and he replied that he could not do this as he was “technically” the person employing the Claimant. The Claimant questioned whether he might be her “business partner” but I saw no response to this.
14. Until June 2021, the Claimant worked in a house, Brook House, operated by a franchisee, Ms Annie Vengesai. The Claimant lived in the home as a 24/7 staff member to ensure stability for a young person for whom she was responsible. She was paid through a company known as AVEC, which was Ms Vengesai’s trading name/trading company. Ms Vengesai’s email address was a kokiohealthcare.com address. The Claimant provided weekly reports in relation to the young person for whom she was responsible at this address and sent an incident report on 2 June 2020 in a document headed “Kokio Healthcare Brook House Incident Report”. The Claimant’s timesheets were headed “AVEC Support Limited, Brook House Timesheet”.
15. I was provided with a document which, on its face, appeared to be a contract of employment between the First Respondent and the Claimant. The contract was headed “Casual Worker Contract Agreement” and, on its face, it was a zero-hours contract. The contract was stated to be for a “Live-in Senior Support

Worker". Employment with the First Respondent was stated to start on 8 June 2020. Provisions were set out as to hours of work, place of work, pay, holidays, sickness absence, notice and other usual terms found in a contract of employment. Given the nature of the work, there was a Disclosure and Barring Service declaration. Signatures appended to the document were the electronic signatures of the Claimant and the Second Respondent.

16. It was not in dispute that this document was produced after June 2020. The Respondents disputed that the Second Respondent signed the contract or that he had given authority for the use of his electronic signature. They submitted that the contract was not authentic; that it may have been drawn up for some regulatory reason.
17. I concluded that the contract was a genuine contract, very possibly drawn up for compliance reasons. I concluded that the contract was drawn up no later than around July to September 2022, when the Claimant's role changed very substantially. The Claimant would not have been described in a contract of employment as a Support Worker after this time at the latest. The contract reflected the Claimant's role while working at Brook House.
18. In May 2021, while continuing to work in a support worker role, the Claimant entered into a separate franchisee business venture with the Second Respondent in relation to a home known as Bethel House, which she managed in partnership with the Second Respondent. In relation to this separate arrangement, the Claimant does not contend that she was an employee of the Respondents.
19. Shortly after, the Claimant was instructed by the Second Respondent to assume the responsibilities of Placements Officer, a role which later expanded to Assistant Manager. This role involved managing and responding to placement referrals on behalf of franchisees via portals such as West Midlands Placement Portal; communicating between franchisees and the First Respondent's management; requesting and reviewing compliance documents such as gas safety certificates, fire risk assessments and staff training files; ensuring quality assurance standards across multiple franchisee home; and, in due course, supporting franchisees in winning placement bids under the First Respondent's banner. In relation to these duties, the Claimant was under the direct instruction of the Second Respondent.
20. The Respondents delegated to the Claimant the role of bidding for homes other than Bethel House and, by 22 September 2022, on the Respondents' instruction, the Claimant had started the bidding process for three other franchised homes. The bidding was for funding for local authority placements. Successful bidding, which the Second Respondent acknowledged that the Claimant did very well, was financially very beneficial to the First Respondent.
21. The Claimant was also, from about July 2022, involved in the recruitment of staff on behalf of the First Respondent to work in franchised homes, advising applicants on the recruitment process, providing them with relevant information and checking their documents. Staff had to be provided with training, which was compliant with the First Respondent's requirements and facilitated under the First Respondent's policies. References, interview and DBS check were

completed through the First Respondent. All email addresses had a kokiohealthcare.com address and documentation was headed with the First Respondent's branding.

22. In November 2023, the First Respondent produced a Business Plan for Ofsted. This was a proposal aimed at regulatory approval. In the proposal, the Management Team was described as including the Second Respondent as Manager and the Claimant as Assistant Manager. Further description of the Assistant Manager's role in the proposal included a reference to the role as "Placement Officer/Assistant Manager". Many of the listed tasks were tasks which the Claimant was already carrying out at this time.
23. In the event, Ofsted refused the requested registration.
24. The way in which the Claimant was paid for work undertaken differed over time. Initially, when she worked at Brook House, she was paid, on the submission of worksheets, via AVEC. She described herself at this time as a "sole trader".
25. After May 2021, when she entered into a franchise venture with the Second Respondent, the Claimant had two streams of income. First, she received a stream of income from the First Respondent for the work she did for the First Respondent and as part of its operation, on bidding, placements and management work. This payment was described as commission and was directly related to success in funding applications. It was how the Claimant was remunerated for her work, other than her Bethel House work and no separate remuneration was paid. Secondly, the Claimant received dividends and profits from Bethel House.
26. The Respondents did not at this time control the Claimant's hours or where and when she worked. The Second Respondent would ask the Claimant for details of what she was owed and the First Respondent would then transfer the amount owed to her. The Claimant's accountant advised the Claimant to set up a company, Tantu Solutions Ltd, into which her income could be paid directly by the First Respondent. This was purely for financial and accounting reasons. The Claimant was not operating a business on her own account as Tantu Solutions Ltd.
27. On 5 February 2024, the Claimant spoke to the Second Respondent, who told her that she was being "fired with immediate effect". The Claimant messaged the Second Respondent to say that, since she had been fired, she would stop any further work for him, starting immediately. She also provided details of monies she was owed.
28. The Second Respondent replied that "after TF [service user] we are terminating our partnership at Bethel House. For now you can continue to tender and collect your commission and we will plot a way forward in the coming days". The Claimant responded that she was confused by this message.
29. There was no dispute between the parties that the Claimant's working relationship with the Respondents came to an end at about this time.

Analysis and Conclusions

30. In considering the Claimant's employment status, I considered first whether she was employed under a contract of employment. Her complaints in her claim form go back to June 2020. In relation to her dismissal-related claims, I have looked at the position as at the date that her arrangement with the First Respondent (the relevant party for the ERA claims) was terminated.
31. This case is complicated by the existence of franchises and the evolution of the Claimant's working arrangements with the Respondents. I have looked at the facts by reference to different time periods.
32. In the period from 8 June 2020 to June 2021, the Claimant worked at a franchised home, Brook House and was paid via AVEC, Ms Vengesai's trading name. She described herself as a "sole trader". Ms Vengesai would have exercised some control over the Claimant's day-to-day work. These factors point away from there being a contract of employment between the First Respondent and the Claimant.
33. On the other hand, while I was not particularly assisted by the fact that documentation was branded with the First Respondent's logo, which is normal in a franchise, the Claimant was recruited by the Second Respondent, director of the First Respondent to provide personal service as a support worker. A contemporaneous WhatsApp message clearly indicated that the Second Respondent considered himself to be the Claimant's employer and the Claimant reasonably understood that the First Respondent would be her employer. Perhaps most compellingly, the written contract of employment, looked at objectively, is very strong evidence that the Claimant was employed by the First Respondent.
34. Taking into account all these factors, I consider that the Claimant was employed the First Respondent throughout this period under a contract of employment.
35. In the period from June 2021, the factors pointing to a contract of employment between the Claimant and the First Respondent become stronger still. The Claimant was acting as Placements Officer and undertaking significant management duties, all under the instruction of the Second Respondent. From July 2022, she had an increasing role in undertaking bidding on behalf of other franchisees because the Respondents recognised her considerable ability in this role, directly benefited from this and instructed her to do it.
36. While I accepted that the Business Plan submitted by the First Respondent to Ofsted was only a proposal, it was nevertheless consistent in many respects with the role that the Claimant, in practice, was carrying out at the relevant times. She was operating very much as part of the organisation, carrying out ordinary managerial responsibilities in relation to matters such as recruitment, training and compliance, as well as carrying out her bidding role. She could not send a substitute to carry out the duties she was instructed to carry out, nor did the Respondents suggest that she could.
37. Further, looked at objectively, the Second Respondent's message that the Claimant was "fired", followed by a message indicative of permission for her to continue to carry out her role, is a pointer towards a contract of employment.

38. The fact that the Claimant was paid monies described as “commission” and that at a certain point she was paid through her own company, Tantu Solutions Ltd, are factors I take into account in considering whether she was employed under a contract of employment but they are not determinative. Nor did I find determinative the fact that the First Respondent did not control the Claimant’s hours and where and when she worked after she ceased working as a support worker at Brook House, given her seniority in the organisation.
39. Looking at the reality of the relationship between the Claimant and the First Respondent and factors including mutuality of obligation, control and the Claimant’s integration into the First Respondent’s business, I find that the Claimant was employed under a contract of employment within the meaning of section 230(1) and 230(3) of the ERA and section 83(2) of the EqA.
40. Given this finding, I have not considered the other broader definitions of an employee or a worker in the ERA or EqA.

Approved by:

Employment Judge McNeill KC

Dated: 5 February 2026

Sent to the parties on:
6 February 2026

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For the Tribunal Office:

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