# EMPLOYMENT TRIBUNALS

**Claimant:** **C Khan**

**Respondent:** **Castle Point Borough Council**

**Heard at:** **East London Hearing Centre (by video)**

**On:** **16 January 2026**

**Before:** **Employment Judge W Anderson**

**Representation**

For the claimant: In person

For the respondent: V Von Wachter

# RESERVED JUDGMENT

1. **The claimant was not an employee or worker of the respondent within the meaning of section 230(1) or s230(3)(b) Employment Rights Act 1996.**

2. **The tribunal does not have jurisdiction to hear the claimant's claims of breach of contract and unauthorised deductions from wages. The claim is therefore dismissed.**

# REASONS

## Background

1. The claimant brings a claim of unpaid wages or breach of contract against the respondent. The respondent's position is that (i) the claimant was an agency worker, and the tribunal has no jurisdiction to hear this claim against it (ii) the claim is out of time (iii) there are no unpaid wages. The claimant's placement with the respondent came to an end on 21 February 2025. ACAS conciliation commenced and ended on 27 May 2025. The claim was filed on 30 May 2025.

2. When filing its grounds of response the respondent applied for a strike out or deposit order on the grounds that the claims were 'scandalous, vexatious, or have no reasonable prospects of success and are brought against the wrong Respondent'. It did not explain why it believed the claims to be scandalous or vexatious.

3. The tribunal listed the case for a one day final hearing on 10 November 2025. On 3 September 2025 the respondent asked for the hearing to be relisted as a case management hearing in view of its questions regarding jurisdiction. On 2 October it asked for the hearing on 10 November to be relisted as a preliminary hearing to consider jurisdiction. On 17 October the respondent requested that the tribunal consider whether the claim should be struck out at the hearing on 10 November 2025 or whether the tribunal had jurisdiction. On 23 October the claimant objected in writing to the strike out application. It seems then that EJ Crossfill on 28 October 2025, instructed the tribunal administration to relist the hearing on 10 November as a preliminary hearing and advise the parties that the hearing would be to determine the strike out/deposit order application, and ordered that the respondent should file a skeleton argument. Although the hearing was relisted as a preliminary hearing the judge's instructions, as far as I can tell, were not sent to the parties and were not before EJ Overton on 10 November 2025.

4. The parties attended on 10 November 2025, and it is noted by the judge in the case management order that the hearing that day was for the purpose of deciding the claimant's employment status. There is no reference in the case management order to consideration of a strike out application.

5. For reasons that are not relevant, the hearing did not go ahead on 10 November 2025. EJ Overton listed this one day public preliminary hearing as follows:

> *The issues to be decided at the preliminary hearing are whether or not the claimant was an employee of the respondent or a worker employed by the respondent and therefore whether she has the appropriate employment status to bring claims of unauthorised deductions from wages and breach of contract against the respondent.*

6. That was the issue before me today, I heard witness evidence and made a decision on status as set out below. I did not consider the strike out/deposit order application.

## The Hearing

7. The parties filed a joint bundle of 462 pages. The claimant filed a witness statement. The respondent filed two witness statements (Damien Ghela and Sarah West). All three witnesses attended and gave evidence on oath. The claimant and Ms von Wachter both made oral closing submissions. I reserved judgment.

## Relevant facts

8. The respondent is a borough council. Some of its vacancies were filled by agency workers. Two of the agencies which supplied it with workers were Refine and Matrix.

9. The claimant was offered the role of Housing Business Support Officer by the respondent, as an agency worker, contracted by Refine, and commenced that work on 21 May 2024. I was not provided with the contract between the claimant and Refine or Refine and the respondent, but the claimant accepted in cross examination that she was taken on as an agency worker.

10. Shortly after she began working the claimant says that her job changed. She explained that she had been brought in to carry out a particular task but because of failings in the respondent's systems was unable to do that. Instead, she took over the work of remedying the systems defects, which she had the skills to do, which she believed to be more specialist work, and which should therefore be paid at a higher rate. None of this evidence was contested or is contradicted by the statements of the respondent's witnesses and I accept it.

11. The claimant described her role as: *auditing, data analysis, and interrogation of systems and records across multiple compliance areas, including stock condition, fire risk assessments, gas safety, smoke alarms, water risk assessments, asbestos, and electrical safety.* She also referred to engaging and managing a temporary surveyor. None of this evidence was disputed by the respondent and I accept this description of the claimant's role.

12. The claimant negotiated a pay rise with the respondent directly, making her case to Damien Ghela who supervised her day-to-day work. An uplift was agreed in or around September 2024. That is not in dispute. The amount of that uplift and whether it was paid in full is the subject of the substantive case and is not relevant to the matter of status.

13. On 19 September 2024 the claimant signed a contract with a new agency, Matrix, and started to receive payment based on a day rate. Previously when with Refine she was paid an hourly rate. The claimant received her pay from Matrix and, as elected by the claimant, she was paid on a PAYE basis.

14. The claimant said in oral evidence that she was forced to move to Matrix by the respondent or she would not have been paid. The relevance of this would be in relation to the control that the respondent had over the claimant. This was not something raised in her witness statement, and I note that in her ET1 she states *'…with CPBC's agreement, I moved from Refine to Matrix to simplify invoicing…'.* This implies that it was a decision she made with which the respondent agreed. There was no documentary evidence to support the claim that she had been forced to move to Matrix, and it was not put by the claimant to the witnesses that she had been forced to move agency. I do not accept that she was forced.

15. The contract between the claimant and Matrix, entitled PAYE contract, contains the following relevant clauses:

***1. Definitions***

*1.1. The following terms and expressions shall have the following definitions throughout this Contract;*

*…*

*b) 'Client' shall mean public sector bodies established by CDL to whom they provide contingency staffing resources;*

*c) 'Contract' shall mean this agreement between CDL and the Direct;*

*d) 'Direct' shall mean the individual required to provide the Services under this Contract…*

*f) 'Engagement' shall mean the period of time that the Direct performs the services for a Client under this Contract;*

***Background***

*CDL has been established to provide contingency staffing resources to public sector bodies ('Client(s)') who wish to temporarily engage workers on a 'Contract for services' basis, as non-staff Contractors.*

*It is the Parties intention that nothing in this Contract will render the Direct an employee, worker, agent or partner of CDL or of the Clients and the Direct shall not hold themselves out as such.*

*The terms of this Contract shall govern the whole Contractual relationship between CDL and the Direct for the arrangement of the payment to the Direct for the services that they have provided to the Clients.*

*…*

***3. Absence***

*…*

*3.5. Subject to clause 3.3, the Direct shall provide CDL and the Client, in writing, with reasonable notice of any planned absence. Such notice should be at least twice as long as the amount of holiday the Direct would like to take.*

***4. Direct's Performance***

*4.1. The Direct shall perform the Services on a 'contract for services' basis under the Client's supervision, direction and control.*

…

*4.7. The Client is under no obligation to provide the Direct with any further contracts or services, nor is the Direct under an obligation to accept such contracts or services if offered by the Client. CDL reserves the right to suggest the services of the Direct with prior consent from the Direct.*

…

***8. Termination***

…

*8.4. The Client may terminate any Engagement immediately without prior notice or liability for such immediate termination.*

16. There was no written contract, employment or otherwise, between the claimant and the respondent at any time.

17. The claimant said that she was told what to do by the respondent and that she was supervised by Mr Ghela. Mr Ghela accepted that he supervised the claimant's work and said in written evidence that he supervised all of the agency workers. He also accepted that the respondent told the claimant what work to do. Again, he said this was no different to how other agency staff were treated.

18. When asked in cross examination if she believed she was subject to the respondent's HR procedures, the claimant said that she would have expected so. When asked if she needed permission to take holidays the claimant said that she did not know. She went on to say she would not have taken holiday without discussing it with the respondent and would have made herself available even when not in the office. I find, on consideration of the claimant's answer and the contract with Matrix, that the claimant did not need permission from the respondent to take holidays on any particular day.

19. The claimant's engagement with the respondent ended on 21 February 2024. This included a notice period of one week. Mr Ghela sent the claimant a letter dated 17 February 2025 entitled 'End of Contract'. It is clear from the letter and Mr Ghela's evidence that he was of the view that the council had terminated the contract, i.e. the claimant's engagement with the respondent. The claimant said that the contract had come to its end. I have made no finding on this as it was not relied upon by either side as indicative of employment or worker status.

20. Ms Smith, from HR, said that she had queried with Mr Ghela as to why he had sent a letter as this was not required when terminating an agency contract. He had said it was a courtesy.

21. After the end of the contract the respondent continued to investigate a complaint from the claimant that she had been underpaid. This investigation involved a meeting with Matrix. The respondent concluded that it had not underpaid the claimant.

## Submissions

22. Both parties made brief oral submission which I have summarised below.

23. For the respondent Ms Von Wachter said that the terms under which the claimant worked did not meet the test in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433 QBD* so as to establish an employment contract between the claimant and the respondent. She said that in *Carmichael and anor v National Power plc [1999] ICR 1226, HL*, Lord Irvine stated clearly that the irreducible minimum for establishing an employment contract was control and mutuality of obligation. The claimant was controlled by Matrix, not by the respondent. Under clause 4.7 of her contract with Matrix she was not under an obligation to accept contracts or services from the respondent, and it was not obligated to provide her with them. Following *James v London Borough of Greenwich [2008] EWCA Civ. 35* a contract should only be implied where it was necessary to do so. Here there was a perfectly workable contract between Matrix and the claimant. In terms of worker status as defined at s230 (3)(b) Employment Rights Act 1996 it is arguable that there was a contract, but the contract is not with the respondent, it is with the employment agency. That was the only contract in existence and therefore the claimant cannot be considered to be a worker of the respondent. The contract with Matrix, sitting between the claimant and respondent, predicates against worker status.

24. The claimant said that her service to the respondent was mandatory in practice and there was no possibility of substitution. The role required the continuity of her professional judgment, and her regulatory and organisational knowledge. Control was extensive and multi-layered. She had to sign the contract with Matrix, or she would not have been paid. She was integrated into the organisation, used its systems and accessed internal platforms to interrogate data.

## Law, Decision and Reasons

25. Employment Rights Act 1996:

> **230.— Employees, workers etc.**
>
> (1) In this Act *"employee" means* an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
>
> (2) In this Act *"contract of employment" means* a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
>
> (3) In this Act *"worker" (*except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under) –
>
> (a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act *"employer",* in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act *"employment"* –

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and *"employed" shall* be construed accordingly.

26. In *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 1 All ER 433 QBD* the court set out the following three questions to be taken into account when determining whether there was a contract of service:

a) Did the worker agreed to provide his own work and skill in return for remuneration?

b) Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of employer and employee?

c) Were the other provisions of the contract consistent with its being a contract of service?

27. Flowing from that decision it has been determined that there is an irreducible minimum (*Nethermere (St Neots) Ltd v Gardiner and anor 1984 ICR 612, CA*), without which it is very unlikely that a contract of services exist. This consists of:

a) mutuality of obligation

b) personal performance, and

c) control

28. Lord Irvine in *Carmichael and anor v National Power plc 1999 ICR 1226, HL*, said that where, in that case, there was no obligation on the respondent to provide work and no obligation on the claimant to undertake it, there would be

*'an absence of that irreducible minimum of mutual obligation necessary to create a contract of service'*.

29. In *James v London Borough of Greenwich [2008] EWCA Civ. 35* the facts were similar to this case. The claimant was contracted through an agency to provide paid work to the council. She changed from one agency to another during the time (a period of three years) that she worked at the council. After a period of sickness, she was told that she had been replaced by another agency worker. She brought a claim of unfair dismissal against the council. The decision of the Employment Tribunal was that the claimant was neither an employee nor a worker of the respondent. The decision was upheld by the Employment Appeal Tribunal and the Court of Appeal. Lord Justice Mummery expressly approved the guidance given by the Employment Appeal Tribunal in that case to tribunals. The EAT reference is UKEAT/0006/06ZT and although it is lengthy it is relevant and I have set out the guidance in full:

> *54. In the casual worker cases, where the issue is whether there is an umbrella or global contract in the non-work periods, the relevant question for the Tribunal to pose is whether the irreducible minimum of mutual obligations exists. It is not particularly helpful to focus on the same question when the issue is whether a contract can be implied between the worker and end user. The issue then is whether the way in which the contract is in fact performed is consistent with the agency arrangements or whether it is only consistent with an implied contract between the worker and the end user and would be inconsistent with there being no such contract. Of course, if there is no contract then there will be no mutuality of obligation. But whereas in the casual worker cases the quest for mutual obligations determines whether or not there is a contract, in the agency cases the quest for a contract determines whether there are mutual obligations.*
>
> *55 If there were no agency relationship regulating the position of these parties then the implication of a contract between the worker and the end user would be inevitable. Work is being carried out for payment received, but the agency relationship alters matters in a fundamental way. There is no longer a simple wage-work bargain between worker and end user.*
>
> *56. In Dacas, Munby J was surely right when he observed that in a tripartite relationship of this kind the end user is not paying directly for the work done by the worker, but rather for the services supplied by the agency in accordance with its specification and the other contractual documents. Similarly, the money paid by the end user to the agency is not merely the payment of wages, but also includes the other elements, such as expenses and profit. Indeed, the end user frequently has no idea what sums the worker is receiving.*

57 *The key feature is not just the fact that the end user is not paying the wages, but that he cannot insist on the agency providing the particular worker at all. Provided the arrangements are genuine and the actual relationship is consistent with them, it is not then necessary to explain the provision of the worker's services or the fact of payment to the worker by some contract between the end user and the worker, even if such a contract would also not be inconsistent with the relationship. The express contracts themselves both explain and are consistent with the nature of the relationship and no further implied contract is justified.*

58. *When the arrangements are genuine and when implemented accurately represented the actual relationship between the parties — as is likely to be the case where there was no pre-existing contract between worker and end user — then we suspect that it will be a rare case where there will be evidence entitling the Tribunal to imply a contract between the worker and the end user.* ***If any such a contract is to be inferred, there must subsequent to the relationship commencing be some words or conduct which entitle the Tribunal to conclude that the agency arrangements no longer dictate or adequately reflect how the work is actually being performed, and that the reality of the relationship is only consistent with the implication of the contract. It will be necessary to show that the worker is working not pursuant to the agency arrangements but because of mutual obligations binding worker and end user which are incompatible with those arrangements****. [Emphasis added]*

59. *Typically the mere passage of time does not justify any such implication to be made as a matter of necessity, and we respectfully disagree with Sedley LJ's analysis in Dacas on this point. It will no doubt frequently be convenient for the agency to send the same worker to the end user, who in turn would prefer someone who has proved to be able and understands and has experience of the systems in operation. Many workers would also find it advantageous to work in the same environment regularly, at least if they have found it convivial. So the mere fact that the arrangements carry on for a long time may be wholly explicable by considerations of convenience for all parties; it is not necessary to imply a contract to explain the fact that the relationship has continued perhaps for a very extensive period of time. Effluxion of time does not of itself establish any mutual undertaking of legal obligations between the worker and end user. This is so even where the arrangement was initially expected to be temporary only but has in fact continued longer than expected. Something more is required to establish that the tripartite agency analysis no longer holds good.*

30. There was a contract between the claimant and Matrix, the agency. It was an express written contract which specifically states that there was no mutuality of obligation between it and the claimant or between the claimant and the respondent. The contract covered the entire agreement between the claimant and Matrix, in relation to payment, termination of the contract between it and the claimant or termination of the engagement between the claimant and the respondent. It appears to be a standard contract between an agency and an agency worker. It was not suggested by the claimant that there was anything unusual about it.

31. I was not provided with a copy of the contract between Matrix and the respondent, but it was not suggested that the respondent had any right to insist that the claimant specifically was provided for the work on which she was engaged. I have taken account of her evidence that the work was specialist and that she has a very specific skill set, which I accept, however I also note that the respondent decided not to continue with the engagement in February 2025, and that the reasons it gives are not to do with the work the claimant was carrying out having finished.

32. I find that there was nothing unusual in the arrangement between Matrix, the claimant and the respondent such that the arrangement was not explained by the contract between the claimant and Matrix.

33. The claimant states in her witness statement that the way she was managed was consistent with an employment relationship. She states that decisions about continuation, authority and pay were taken unilaterally by the Council, and she did not have autonomy over either when or how the engagement would continue. I find that while she was managed by Mr Ghela, this was not inconsistent with a genuine agency staff arrangement. She was engaged to carry out a specific task, this was later changed, with her agreement, to a different specific task, and supervised by the appropriate person in the respondent's organisation. Supervision of an agency worker is not unusual, and it is to be expected that agency or temporary staff would receive some degree of supervision by the end user. The claimant could have ended the engagement if she chose to do so. I do not accept that there was evidence that she was integrated into the organisation to a degree beyond an ordinary agency agreement. She was engaged to carry out a specific task. Carrying out the task meant that she had to liaise with senior people in the respondent's business and would be a contact for queries relating to the tasks she was performing. There was no evidence that she had to seek permission to take leave or that she was subject to the respondent's HR policies. Neither of those points was put to the respondent's witnesses. I did not find anything in the description of the work the claimant carried out (set out in her witness statement and in closing submissions), that indicated that a contract should be inferred beyond the contract between the claimant and Matrix.

34. I have given specific consideration to the point raised by the claimant that her role changed, and she negotiated an increase in pay directly with the respondent. She said that she had discussed this with Refine and they had suggested she discuss the matter directly with the respondent as they did not know about the area of work she specialised in. This may be unusual for an

agency worker but if so, that was not a point put to the respondent's witnesses. The claimant then changed agencies from Refine to Matrix. I have found that this was her choice and not something instigated by or insisted upon by the respondent. The new contract with Matrix commenced at around the same time as the claimant's rate of pay changed. Clearly there can have been no intention on the part of the respondent to create a contractual employment relationship directly with claimant at this point and the claimant has, of choice, entered into a new agency contract covering her engagement with the respondent.

35. In conclusion I find that where there is a clear and explicit contractual relationship between the claimant and Matrix, setting out the terms of her engagement with the respondent, then there is no necessity to infer a contract between the claimant and the respondent. There is no evidence to suggest that the agency arrangements no longer dictate or adequately reflect how the work is actually being performed or that the reality of the relationship is only consistent with the implication of a contract between the claimant and the respondent. For these reasons I find that the claimant was not an employee of the respondent and the tribunal has no jurisdiction to consider the claimant's claim of breach of contract against the respondent.

36. On the matter of whether the claimant was a worker employed by the respondent I find that the only contract under which the claimant undertook to perform services was with Matrix. The claimant did not make any submissions about and has not claimed in her pleadings or in her witness statement that she was a worker contracted by the respondent to provide services for it. The claimant is a litigant in person, and I have considered the point in any event. I have found above that the claimant's contract with Matrix covered her engagement with the respondent. I have found that there was nothing about the engagement and how the claimant performed her work which would lead to the conclusion that it was necessary to infer a contract of service between the claimant and the respondent. I find also that there was nothing about the engagement and how the claimant performed her work, which would lead to the conclusion that there was an implied contract for service between the claimant and the respondent. For this reason, I find that the claimant was not a worker employed by the respondent and the tribunal has no jurisdiction to consider the claimant's claim of unauthorised deduction from wages under s13 Employment Rights Act 1996.

37. As the tribunal has no jurisdiction to hear a claim of breach of contract or unlawful deduction from wages by the claimant against the respondent, the claim is dismissed.

**Approved by:**
**Employment Judge W Anderson**
**Dated: 23 January 2026**