



EMPLOYMENT TRIBUNALS

Claimant: Miss Olivia Messer

Respondent: Literal Humans Limited

HELD AT: Leeds Employment Tribunal
(Hybrid in person hearing)

ON: 3 and 4 February 2026

BEFORE: Employment Judge Buckley
Tribunal Member Fawcett
Tribunal Member Rhodes

REPRESENTATION:

Claimant: In person

Respondent: In person (Mr. David)

RESERVED JUDGMENT

LIABILITY

1. The claim for automatic unfair dismissal is dismissed.
2. The claim for ordinary unfair dismissal succeeds.
3. The claim for wrongful dismissal succeeds.
4. The claim for a redundancy payment is dismissed.

REMEDY

5. No reduction is made to the compensatory award for contributory fault under section 123(6) of the Employment Rights Act 1996.

6. No reduction is made to the basic award for conduct under section 122(2) of the Employment Rights Act 1996.
7. A 10% deduction is made to the compensatory award under the principles set out in **Polkey v AE Dayton Services Ltd** [1987] UKHL 8.
8. The ACAS Code of Practice on disciplinary and grievance procedures does not apply.
9. The remainder of the tribunal's remedy judgment will be given after a remedy hearing.

REASONS

Claims and Issues

1. The claimant brings the following claims:
 - a. Ordinary unfair dismissal
 - b. Automatically unfair dismissal (protected disclosure)
 - c. Claim for a redundancy payment
 - d. Claim for breach of contract (unpaid notice pay)
2. The tribunal set out at the beginning of the hearing that it would determine the issues of liability, conduct and contributory fault, compliance with any relevant ACAS code of practice and any deduction for the chance that the claimant would have been dismissed fairly in any event. The remainder of the issues on remedy will be determined at a separate remedy hearing.
3. The issues are as set out in the case summary in the order of Judge Brain and are as follows.

Unfair dismissal

4. It is not in dispute that the claimant was dismissed by the respondent without notice on 18 July 2024. She was not liable to summary dismissal and therefore the deemed date of dismissal is 25 July 2024. (She therefore over has two years of service and has an entitlement to complain of unfair dismissal and for a redundancy payment).
5. Was the reason or principal reason for dismissal that the claimant made a protected disclosure?
6. If so, the claimant will be regarded as unfairly dismissed.
7. If not, what was the reason or principal reason for dismissal?
8. Was it a potentially fair reason?

9. The respondent says the reason for the dismissal was redundancy or for a substantial reason capable of justifying the dismissal. The claimant does not concede there to have been a redundancy. Her case is that all the employees were dismissed and re-engaged purportedly as self-employed consultants. They remained employees (notwithstanding the re-engagement as consultants) and therefore the need of the respondent for employees to carry out work of a particular kind did not cease or diminish nor was there any expected cessation or diminution of the respondent's requirement.
10. If the reason was redundancy, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
- a. The respondent adequately warned and consulted the claimant;
 - b. The respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - c. The respondent took reasonable steps to find the claimant suitable alternative employment;
 - d. Dismissal was within the range of reasonable responses.
 - e. Alternatively, the respondent says the reason was a substantial reason capable of justifying dismissal, by reason of business need.
11. Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

Remedy for unfair dismissal.

12. The claimant does not wish to be re-employed by the respondent.
13. If there is a compensatory award, how much should it be? The Tribunal will decide:
- a. What financial losses has the dismissal caused the claimant?
 - b. Has the claimant taken reasonable steps to replace her lost earnings, for example by looking for another job?
 - c. If not, for what period of loss should the claimant be compensated?
 - d. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

- e. If so, should the claimant's compensation be reduced? By how much?
 - f. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - g. Did the respondent or the claimant unreasonably fail to comply with it?
 - h. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - i. If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
 - j. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - k. Does the statutory cap of fifty-two weeks' pay or £115,115 apply?
14. What basic award is payable to the claimant, if any? The respondent has not paid any redundancy payment to the claimant. Should they do so, and the tribunal is satisfied that there was a redundancy, but the dismissal was unfair then the basic award shall be reduced to nil. (If there was no redundancy, and the dismissal was unfair, then the respondent will be liable for a basic award but may claim credit for any redundancy payment against the compensatory award).
15. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Wrongful dismissal / Notice Pay

It is not in dispute that the claimant was entitled to two months' notice of termination of her contract of employment.

Was the claimant paid for that notice period? It is not in dispute that the respondent has only paid her one month's notice.

Protected disclosure

16. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
- a. What did the claimant say or write? When? To whom? The claimant says that she made disclosures on these occasions:
 - b. At a meeting held on 11 July 2024.
 - c. By email dated 17 July 2024.
17. Did she disclose information? The claimant claims that she disclosed to the employer that dismissing employees and reengaging them purportedly as self-

employed consultants is ineffective (as they would remain employees notwithstanding the labelling of them as self-employed consultants) and was an illegal attempt to evade employer's national insurance liability.

18. Did she believe the disclosure of information was made in the public interest, as such arrangements are against public policy that taxes lawfully due be paid to HMRC.

19. Was that belief reasonable?

20. Did she believe it tended to show that:

- a. By failing to pay or proposing not to pay national insurance contributions to HMRC a criminal offence had been, was being or was likely to be committed by the respondent.
- b. The respondent had failed, was failing or was likely to fail to comply with any legal obligation (to pay taxes due to HMRC).

21. Was that belief reasonable?

22. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

Redundancy

23. Was the claimant redundant?

24. If so, to what redundancy pay is she entitled? It appears that the redundancy pay due to her if successful with the claim is £1400 (based upon her having two years of service and the amount of her weekly pay which is subject to the statutory cap of £700 per week).

The issue of the new contracts

25. During cross-examination Mr. David said to the claimant that the issues of whether or not the new contracts were genuinely contracts of self-employment/consultancy was not a matter for this tribunal to decide. The Judge pointed out to Mr. David that this was relevant to two issues: whether or not there was a redundancy situation and whether or not the dismissal was fair.

26. The tribunal notes that this was made clear to the respondent on a number of occasions prior to the hearing.

27. First, in the letter from the tribunal dated 22 April 2025 in which the respondent's application to extend time was granted, it was made clear that the lawfulness of the new contracts would be an issue that was relevant to fairness:

"...it is not entirely clear that the respondent's argument that dismissing the claimant because she declined to convert, effectively, from employed to self-

employed to save money while retaining all the other staff amounts to a redundancy, but it might amount to “some other substantial reason”.

This depends on the facts of the case and it is in the interests of justice to allow the respondent to present evidence in support of their argument. An alternative explanation is that the respondent has acted unlawfully in seeking to reduce its costs by forcing employees into non-genuine self-employed contracts”

28. The list of issues in the case management order of Judge Brain also makes clear that the tribunal will need to determine the status of the new contracts for the purposes of determining if there was a redundancy situation:

“The claimant does not concede there to have been a redundancy. Her case is that all the employees were dismissed and re-engaged purportedly as self-employed consultants. They remained employees (notwithstanding the re-engagement as consultants) and therefore the need of the respondent for employees to carry out work of a particular kind did not cease or diminish nor was there any expected cessation or diminution of the respondent’s requirement.”

Evidence

29. The tribunal heard evidence from the claimant and from Mr. David for the respondent.
30. The claimant gave clear and consistent evidence and we accepted that she was giving honest evidence to the best of her recollection.
31. We found that Mr. David’s evidence was intended to make his case look as favourable as possible. For example, he attempted to illustrate the claimant’s unreasonableness by pointing out that nine employees had accepted the change in terms and conditions to which the claimant had objected. Of these nine employees, one was Mr David himself. The list included Akili Lamour who was engaged under the contractor contract only after the claimant had left.
32. This was an example of Mr David overstating his case in a misleading way. Even after this had emerged in evidence Mr David still included in his closing submissions the statement ‘We restructured to contractor model. We offered all ten employees the chance to continue working. Nine employees accepted and remain with us today’. It is untrue to say that ten employees were offered ‘the chance to continue working’. It is untrue to say that ‘nine employees accepted’. It is also untrue to state that the nine ‘employees’ remained with the respondent today. For example, Carl McDonald left on 24 July 2024 and Nathan Smith left in December 2024.
33. For that reason, where there was a conflict of evidence we preferred the claimant’s evidence.
34. We also heard evidence from two witnesses on behalf of the claimant. We heard from Nathan Smith, the claimant’s former manager at the respondent. He left the business in December 2024. We found Mr Smith to be a consistent and credible witness, although he only added a little relevant factual evidence.

35. We heard from William Gadsby Peet, the co-founder of the business. He left the respondent on 1 June 2024 before the relevant period. He has been in dispute with Mr David. For those reasons we gained limited assistance from his evidence.
36. There were some difficulties with the bundle, but before the evidence began we had before us an agreed bundle of 227 pages.

Relevant Law

37. The protection of employees from unfair dismissal is set out in section 94 of the Employment Rights Act 1996 (ERA).
38. Section 98(1) sets out that that an employer may only dismiss an employee if it has a fair reason (or principal reason) for that dismissal:

“In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show:

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.”

39. One of the reasons falling within subsection (2) is ‘that the employee was redundant’. Redundancy has the meaning given to it by section 139 ERA:

“139. Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

...

- (b) the fact that the requirements of that business—
 - (i) for employees to carry out work of a particular kind... have ceased or diminished or are expected to cease or diminish”

40. For a reason to be “another substantial reason” so as to fall within the catch all of section 98(1)(b) of the ERA 1996 it has been held that it must meet certain characteristics or qualities:

a) It must be substantial, meaning it must not be frivolous or trivial, and must not be based on an inadmissible reason such as race or sex (**Willow Oak Developments Ltd t/a Windsor Recruitment v Silverwood and ors** 2006 ICR 1552)

b) It need only be genuinely held, it need not be sophisticated. A decision to dismiss cannot be substantial if it is whimsical or capricious (**Harper v National Coal Board** 1980 IRLR 260, EAT),

c) It must be something that could justify dismissal, it is not necessary to consider if it does justify it at the time of the section 98(1) question (**Mercia Rubber Mouldings Ltd v Lingwood 1974 ICR 256, NIRC**)

d) An employer does not have to show that a reorganisation was essential, merely that there was a 'sound, good business reason' for it. (**Hollister v National Farmers' Union 1979 ICR 542**) and it is not necessary that the survival of the business is at stake (**Catamaran Cruisers Ltd v Williams [1994] IRLR 384**).

e) Nor is it the tribunal's concern to measure the extent to which the changes might achieve a business aim. As long as the advantages are clear the employer does not need to show any particular 'quantum of improvement' achieved (**Kerry Foods Ltd v Lynch 2005 IRLR 680, EAT**). This is closely related to satisfying the tribunal that the reason was genuine.

41. Subsection (4) of section 98 provides:

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

42. The tribunal must determine whether the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted in light of those circumstances (**Iceland Frozen Foods Ltd v Jones [1982] IRLR 439**).

43. Some principles that aid the exercise of determining the range of reasonable responses emerge from the case law:

a) In a case of a refusal to accept a change in contractual terms the tribunal has to weigh the business reasons for imposing the changes against the advantage and disadvantage of them for the employees (**Catamaran Cruisers**) – but this is only part of the assessment – reasonableness needs to be assessed 'in the round' (**Richmond Precision Engineering Ltd v Pearce [1985] IRLR 179**);

b) If there is a sound good business reason for the reorganisation, the unreasonableness or reasonableness of the employer's conduct has to be looked at in the context of that reorganisation (**St. John of God (Care Services) Ltd. v Brooks [1992] ICR 715**);

c) One of the factors relevant to reasonableness may be the number of employees who ultimately agreed to accept the changes to terms and conditions (**St. John of God**); and

d) Another will be whether the employer had reasonably explored all alternatives to dismissal (**Copsey v WBB Devon Clays Ltd** [2005] EWCA Civ 932), which is part of the overall assessment of the fairness of the employer's procedure, which also includes whether there was meaningful consultation.

Automatically unfair dismissal because of a protected disclosure

44. Under section 103A of the Employment Rights Act 1996, a dismissal is automatically unfair if the principal reason for the dismissal was that the claimant made a protected disclosure.

45. Because of my findings on the reason for dismissal, it is not necessary to set out the law on what amounts to a protected disclosure.

Employee status

46. Section 230 Employment Rights Act 1996 includes the following relevant provisions:

“(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.”

47. As to whether such a contract is a contract of employment, the general starting point is the guidance in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 QB 497 at 515C-F:

“A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.

... Freedom to do a job either by one's own hands or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be ...”

48. As to the second condition - that of control - what MacKenna J said was:

“... Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted.

“What matters is lawful authority to command so far as there is scope for it. And there must always be some room for it, if only in incidental or

collateral matters” **Zuijs v Wirth Brothers Proprietary Ltd** [[1955] 93 CLR 561, page 571].” (Page 515F-G)

49. In **Autoclenz Limited v Belcher** [2011] ICR 1157; [2011] UKSC 41, Lord Clarke JSC, with whom the other justices agreed, referred to certain contract-law principles which apply to ordinary contracts, such as commercial contracts. These principles are what lawyers call the parole evidence rule and the signature rule and the principle that the only basis on which it might be alleged that the terms of a written contract do not accurately reflect the true agreement of the parties is if there has been a mistake which requires rectification or it is a sham in the strict common law sense. In the sphere of work, a different approach should be taken. The court or tribunal should consider what was actually agreed “...either as set out in the written terms or, if it is alleged those terms are not accurate, what is proved to be their actual agreement at the time the contract was concluded.”

50. In **Uber BV v Aslam** [2021] UKSC 5; [2021] ICR 657 Lord Leggatt JSC, for the whole court, expounded on the “theoretical justification” for that approach. At [75] and [76] he concluded:

“75. It is these features of work relations which give rise to a situation in which such relations cannot safely be left to contractual regulation and are considered to require statutory regulation. This point applies in relation to all the legislative regimes relied on in the present case and no distinction is to be drawn between the interpretation of the relevant provision as it appears in the Working Time Regulations 1998 (which implement the Working Time Directive), the National Minimum Wage Act 1998 and the Employment Rights Act 1996.

76. Once this is recognised, it can immediately be seen that it would be inconsistent with the purpose of this legislation to treat the terms of a written contract as the starting point in determining whether an individual falls within the definition of a “worker.” To do so 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 contract 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. The efficacy of such protection would be seriously undermined if the putative employer could by the way in which the relationship is characterised in the written contract determine, even prima facie, whether or not the party is to be classified as a worker. Laws such as the National Minimum Wage Act were manifestly enacted to protect those whom Parliament considers to be in need of protection and not just those who are designated by their employer as qualifying for it.”

51. In **Ter-berg v Simply Smile Manor House and Others** [2023] EAT 2 HHJ Auerbach said as follows about the legal position following **Uber**:

“40. It seems to me, reading [68] to [76] as a whole, that the decision in **Uber** does not displace or materially modify the **Autoclenz** approach itself, which it cites extensively and adopts. What is said at [76] should not

be read as intended to reformulate, in substance, the approach which **Autoclenz** enjoins tribunals to take. Rather, it forms part of the conclusion of Lord Leggatt's developed account of the theoretical underpinning for that approach, which he says should also accordingly inform the tribunal's assessment of the realities of a given case when it carries out the Autoclenz exercise, in its consideration of whether the enjoyment of employment protection rights may be otherwise at risk of being denied to someone who Parliament intended should benefit from them.

41. The reference at [76] to it being wrong to treat the terms of the written contract as the starting point is not, to my reading, intended to signify that the written terms are in every case necessarily irrelevant or could not conceivably ever accurately convey the true agreement of the parties. Rather, what this means, as fully stated in the course of [76] and [77] as a whole, is that in a case where what was the true intention of the parties in reality is a live issue, it is necessary to consider all the circumstances of the case which may cast light on whether those terms do truly reflect their agreement, and to do so applying the broad doctrinal approach which **Autoclenz** describes, rather than the stricter approach that conventional contractual principles would normally allow. It would therefore be wrong in such a case for the tribunal simply to regard those written terms as conclusive, and thereby fail to conduct that exercise at all. But it would also be wrong for the tribunal to regard the written terms as having a primacy in the sense of exerting a constraint on what the tribunal may find as a result of that exercise were in fact the terms that the parties truly intended to agree.

...

46. In many cases there will be no dispute that the terms of the written agreement do reflect faithfully the intentions and true agreement of the parties as to the nature and basis of the working relationship that they have formed. In such cases there will be no need for a wider inquiry. But, where that is contentious, and it is asserted that the wider factual circumstances suggest that the written terms do not, in some material way, reflect the reality of what was agreed, then the tribunal will err if it confines its inquiry to a consideration of those terms and the application of conventional contract law principles. Rather, it must look beyond those terms to all the relevant circumstances, applying the purposive approach described in **Autoclenz** and **Uber**. Provided that it does so, however, it is not in my judgment an error for the tribunal to begin its analysis by considering those written terms. But it must not treat that as both the beginning and the end of its inquiry. Whether the tribunal has in a given case erred is therefore to be judged not by reference merely to where, in setting out its reasons, it started its inquiry, but by considering, reading the decision as a whole, whether it has overall carried out a sufficiently wide-ranging inquiry in accordance with **Autoclenz** and **Uber**."

Redundancy payment

52. If the claimant was dismissed by reason of redundancy as defined in section 139 ERA she is entitled to a redundancy payment.

Findings of fact

53. The respondent is a digital marketing agency. The claimant was employed as a designer from 19 July 2022 until 18 July 2024. Melany Carter-Groves was the Head of Operations and Strategy. Paul David is the co-founder and chief executive officer of the respondent.
54. At the relevant time the claimant's contract of employment was for 36 hours per week from Monday to Thursday and her gross salary was £38,500. The claimant worked remotely from home.
55. Between January and April 2024 the respondent accumulated a net loss of over £40,000. In that period the respondent had a turnover of approximately £220,000, but costs and overheads of over £260,000.
56. The respondent's lender (CGF) had imposed a minimum cash balance requirement ('the red line'). The Board Pack of 8 May 2024 shows that cash balance had 'recently drifted near the red line' and that the respondent had applied for a repayment holiday. It also identifies a number of other challenges for the respondent including 'a significant co-founder transition', 'client churn' (i.e. losing a number of key client accounts) and striving to achieve more consistent profitability.
57. The 'To do' list at the end of the Monthly Business Review in April 2024 included 'review payroll vs freelancers model'.
58. In May 2024 the respondent made a small profit of £2,258, 80% smaller than forecast. In the May Monthly Business Review on a page headed 'Operating Expenses Analysis' under the heading 'Cost cutting opportunities' the list includes:
- Moving payrolled employees onto freelancer payment schedule (£6,214 monthly savings)
 - Paul reduced salary + move over to freelancer schedule (£3,868 monthly savings)
59. In the 'Current findings' section the commentary states: 'May and January the only profit making months so far this year. Overall quite a large loss which along with cash flow needs to be the top priority for Q3&Q4.'
60. The 'To do' list at the end of the May Monthly Business Review states:
- 'Share with employees new payment structure on June 24th to be implemented July 24th'
61. In June 2024 the respondent made a larger profit, £15,479. The Quarterly Business Review April – June 2024 states:

Cost cutting is going really well - June is the first substantially profitable month this year. A few tweaks we can make:

...

- Official move over to freelancer setup in July

62. In June 2024 the cash balance was only £3,951 above the 'red line' of £170,000.
63. Overall we accept that in the period leading up to June 2024 the respondent was in clear financial difficulty.
64. It is clear from the Monthly Business Reviews that by the time of the May Monthly Business Review, a decision had been taken to change the employees' contracts after the review that had taken place. The plan for 24 June 2024 was to inform the employees of the upcoming change, but the decision to implement it in July 2024 had already been taken: 'Share with employees new payment structure on June 24th to be implemented July 24th'.
65. The intention behind the change to 'a freelancer model' was to save money by removing the need to make payments of pension contributions and employer's national insurance contributions.
66. The Monthly Business Reviews contain no reference to any discussion of or any proposal to remove the role of designer performed by the claimant. That was because there was no such discussion or proposal of that nature up to and including June 2024.
67. Melany Carter-Groves and Paul David informed Nathan Smith in June 2024 that all permanent employees would be moved onto contractor/freelancer contracts. He raised extensive questions about the contract changes and his questions were turned into a FAQ document that was sent to all employees on 26 June 2024.
68. We do not accept Mr David's evidence in his witness statement that 'meetings and discussions' between the claimant and the respondent as part of a consultation process began in 'early June'. This is inconsistent with the May Monthly Business Review which says that the payment structure is to be shared on 24 June. In his closing submissions Mr David said that the 'pre-notice call' with the claimant took place on 24 June.
69. We find that Melany Carter-Groves made individual telephone calls to all employees on or around 24/25 June 2024. This was, as described by Mr David, a 'pre-notice call ... to explain the incoming changes'.
70. The telephone call between the claimant and Melany Carter-Groves took place by telephone on 25 June 2024. No discussions with the claimant took place before that date.
71. In that call the claimant was told that all full-time employees would become freelance/contract workers. She was told that the company would no longer handle taxes or pension contributions, but the work itself would remain the same.

She was told that the holiday entitlement and sick leave would remain the same and the measure was intended to reduce HMRC obligations, saving the company money. It was a 'call to explain and contextualise the incoming contract changes ahead of sending out formal documentation'. It was an information giving rather than a consultation meeting.

72. On 25 June 2024 the claimant raised some questions by message which were answered by Melany Carter-Groves on a 'Slack thread'. In response to the claimant's questions Melany Carter-Groves gave more information on the practicalities of invoicing and paying tax. She also said as follows:

- "If this doesn't work – The risk of things not working out financially exists for all companies, whether it's a giant corporation or a tiny agency and the impact is the same across the board – jobs do get lost. I've been made redundant a few times in both of those scenarios as a longtime permanent employee... Usually, you don't get nearly as much transparency in the early days as we're giving now about how we're moving to be more fiscally responsible and avoid that risk...."

"In terms of the differences between full time and freelancer. The idea here is that you still have the security of a full-time role. It might feel different, but in practise you still have the same things – training/upskilling, chances for career development, being able to take sick days and holiday without losing pay, a contract that is long term, with the same notice periods as a permanent contract."

73. On 26 June 2024 a letter was sent to all the respondent's employees by Melany Carter-Groves. The letter stated:

"Dear Olivia,

This letter follows up on the consultation that we've had with each affected member of staff during June 2024. During those consultation sessions, we discussed the upcoming change to your contract and the reasons behind it. The reasons are summarised below and are accompanied by a more extensive FAQ within our company notion [sic]. The link to that FAQ is here.

Background

This change is part of a landscape of cost saving that we are making. Literal Humans is maturing as a company in many different ways, and one of the most important areas to mature in has been the financial stewardship of the company. With the current economic landscape and the difficulties that many other agencies face, we now have increased financial oversight and pressure from external parties such as our board of directors and Creative Growth Finance (CGF) our loan providers. There is an increasing push to demonstrate that our company can be profitable on a consistent month-by-month basis.

The sales pipeline is healthy, and the company is not at risk, but we're implementing several cost-saving measures to ensure that we can stay

consistently and predictably profitable within a changing business landscape.

The cost-saving measure that we need to implement with our UK staff is a change in the contract type to the format of long-term contractor. This measure allows us significant savings while keeping the impact minimal for our team. This change is being implemented with guidance and due diligence from external advisors.

Main principles

What isn't changing:

- Your job security is no different than it is as a permanent employee
 - This change will not affect your net take-home pay in any way - it is important to us to find a way to cost save without negatively impacting anyone's take-home pay
 - You will be able to take sick leave and accrue holiday in the same way as a permanent employee.
- the terms in the new contract are the same as your current employment contract
- We will still invest in the team on training, development and co-working as budget allows
 - We will still aim to give promotions and pay raises as budget allows

What is changing

- You will need to invoice LH for your pay each month by the 25th
- You will need to save for and file your taxes. We will be developing a how-to guide on how to do this. This style of contract is much easier to manage from a tax perspective than the traditional day-rate freelancer contract.
- You will no longer have employer contributions to your pension, however, your pension will remain in your name and you can choose to pay into it as much as you wish.

Please review, ask questions and sign before the 25th of July 2024 when these changes will be implemented."

74. The attached FAQs contain the following introduction:

"Over the past year we've struggled to strengthen our cash reserves and maintain consistent profitability as an agency. The reasons for this are varied and complex. To respond to this trend, we've now put in place a number of cost-saving measures to improve our cash balance and reach profitability on a consistent, monthly basis. Being a regularly profitable agency is crucial in order to grow our agency and offer benefits to the team (four-day work week, 100% hybrid/remote workplace, healthy salaries, More Happi coaching, co-working spaces, retreats, etc.).

We are also under stricter scrutiny than we were previously from our Board and from Creative Growth Finance, our loan provider. The current economic climate has meant that other agencies within their portfolio are failing.

Please rest assured that we are continuing to grow as a business, and the sales pipeline is healthy, but the pressure is on us now to show monthly consistent and increasing profitability by also reducing costs.

As such, we're putting in place the following cost-saving measures, including:

- 1) We are reducing our CEO salary - a 25% reduction
- 2) We are trimming expenses related to sales, training, consulting, freelancers, etc. resulting in ~£45K annually in recovered costs
- 3) We're making technical changes to employment contracts (resulting in zero loss of net pay for the team) that will net us ~£35K in recovered costs

The change to employment contracts is a necessary change that is being rolled out to all staff members, including all senior leadership (yes, even our CEO). This change is part of the responsible financial stewardship that we need to have in place to continue our funding relationship with CGF and to ensure profitability going forward. This plan allows us a better profitability buffer while not reducing anyone's functional salary. All new employees are and will be hired under this new style of contract as of May 2024.

▼ Can you provide a detailed explanation of the new Contractor contract terms and how they differ from our current employment contracts? When would we receive these?

- You will need to invoice LH at the end of each month for your salary, rather than it being processed through central payroll.
- You'll need to invoice LH as an individual human rather than through a limited company. This will keep your tax filings in line with IR35 regulations. LH's accountant · Ellie) is on hand for any advice.
- The amount that you invoice will be the same as your current net/take-home pay.
- Here's a sample breakdown:
 - ▼ Example: Salary £38,000

Previous Contract	New Contract
Salary £38,000	Salary £38,000
Paid to you Monthly: £2,573.23	Paid to you Monthly: £3,166.58
Payroll Pays Direct to HMRC	Employee pays to HMRC via Self-assessment
	Employee Contribution
	Tax: £423.82
	National Insurance: £169.53

Employee
Contribution

Tax: £423.82

National
Insurance:
£169.53

Employer
Contribution

National
Insurance:
£332.35

▼ How will this transition affect our employment rights, such as sick leave, holiday pay, and other benefits?

- This transition will not affect your employment rights and will count as continual employment despite the change in contract. This forms the main difference between this arrangement and the usual hourly rate freelancer arrangement
- You'll still get sick leave in line with UK employment law.
- You'll still accrue and be able to take holiday in the same way that you do currently. Neither holiday nor sick leave will mean a reduction in your monthly pay.

▼ Will there be any adjustments to our compensation to account for the additional responsibilities and loss of benefits?

- The only loss of benefit will be for those folks who are signed up for a workplace pension. Most agencies of our age, size, and turnover don't have a workplace pension benefit and this benefit was potentially premature for the size of agency that we are. The pension will still remain in your name, but it will no longer have the employer contribution until we're in a place to bring back that benefit

...

▼ How often will we need to invoice the company, and what will the payment terms be? Would it be every two weeks, monthly?

- You'll need to invoice the company on or before the 25th of each month. Payment will be made on the last working day.
- These payments will be made with the same priority as payroll was and no delays are expected with this shift. We understand how important it is to everyone's finances to be paid before the 1st of each month.

▼ How will our workloads and working hours be managed under the new contract?

- Your workload and working hours will be the same as under your previous contract.
- You'll have the same benefits of sick leave and holiday, unlike the usual Freelance arrangements

▼ How will this change affect our job security and opportunities for career advancement within the company?

- This change will not affect your job security or opportunities for career advancement.
- Notice periods will not change.
- We will still be investing in training and upskilling the team. This cost-saving change will give us the opportunity to invest more in all of you.

▼ Will performance reviews and feedback processes remain the same under the new contract?

- Performance reviews and expectations will remain the same under the new contract.

▼ Is there any possibility of reconvertng to a permanent contract in the future?

- Once we have achieved a consistent level of stability and profitability, we will have the option of converting to a permanent contract.

▼ What is the timeline for the implementation of these changes, and how will it be phased in?

- June 4th to 26th 2024 - Initial Discussion with senior management on changes
- 26th June 2024 - Formal written 30-day notice to each team member of the change to the contract, a new contract for signature to review and an invitation to consult on alternatives
- 26th July 2024 - New contract comes into force. You'll receive payroll payments until the 25th of July. You'll need to invoice for the remainder of July on or before the 25th of July

▼ What to do if this change in arrangement doesn't work for you?

- This is a necessary change that is being rolled out to all staff members, including all senior leadership (including Paul our CEO). This change is part of the responsible financial stewardship that we need to have in place. This plan allows us a better profitability buffer

while not reducing anyone's functional salary. If there is a specific reason that this change will substantially impact you (such as employment requirements for a mortgage/house purchase or geographical tax considerations) then please speak with us about potential alternatives."

75. The attached 'contractor agreement' included the following terms:

"CONTRACTOR AGREEMENT

SECTION 1

...

This Agreement ("this Agreement" dated _____ between:

Literal Humans Limited ...

And :

Olivia Messer, ...

("you the contractor") supersedes the agreement dated 19 July 2022

Role & Services:	Senior Designer
Agreement commencement date:	25 July 2024
Agreement termination date:	Ongoing until notice is given
Rate of pay:	£3,208 per Month (£38,500 annual)
Contracting Manager:	Nathan Smith, Lead Digital and UX Designer ("Contracting Manager")
Company hours of work:	36 hours per week, exclusive of Lunch to be worked Monday to Thursday, or where Monday is a bank or public holiday, worked Tuesday to Friday.
Holiday Entitlement:	24 days Holiday (including Public and Bank Holiday and designated end-of-year company closure)
Holiday Year:	From 1 st January to 31 st December each year
Notice:	2 Calendar Months
Location:	Remote working with occasional co-working and company gatherings

This Agreement records the terms on which you, the contractor, will provide the Services to the Organisation. ...

...

SECTION 2

...

1. Independent contractor status

This Agreement creates an independent contractor-client relationship. Nothing in this Agreement will make you an employee, agent or partner of the Organisation for any purpose and you will not hold yourself out as such. The Organisation will not be responsible by virtue of this Agreement or otherwise for the payment or deduction of any amount whatsoever required by law to be made by an employer in relation to its employees.

You undertake to indemnify the organisation and to keep it indemnified against:

- any income tax (whether under PAYE or otherwise) or primary National Insurance contributions including any interest, penalties or costs incurred in connection with the same, which may at any time be levied, demanded or assessed on the Organisation by HMRC or any other statutory body as a result of the provision of your services;
- any reasonable legal fees or other costs incurred by the organisation in enforcing its rights under this clause.

2. Role

In return for the payments set out in Section 1 of this contract, you will perform the Role as described in Section 1.

You shall provide the above services to the Organisation as and when agreed with the Organisation. The Services will be reviewed on a regular basis and the parties may agree to substitute, remove or add to the list of services provided. If you are unable to carry out the Services, you will give the Organisation as much prior notice as possible of your unavailability.

It is understood and agreed that it is not the intention of this Agreement to give you the sole or exclusive right to carry out the services listed above for the organisation.

The Services shall be performed in a competent and professional manner and you warrant that you:

- have the necessary knowledge and expertise to provide the Services; and
- keep your skills and knowledge up to date and are aware of any changes in legislation or working practices relevant to your role; and

- will not knowingly infringe the rights of any third party or breach any obligations owed to any third party in providing the Services.

During your performance of the services you will:

- unless prevented by illness or accident or during an authorised absence, devote the whole of your time, attention and skill during normal working hours to the carrying out of your duties under this contract and you will not engage in any activities which would conflict with the proper performance of your duties or with our business interests;
- obey all lawful and reasonable directions or instructions given to you by your Manager or any other authorised person;
- comply with our rules, regulations and policies;
- use your best endeavours to promote, develop and protect our business, interests and reputation; and
- not use (or allow to be used) your knowledge of or connection with us or your knowledge of or connection with any of our customers or suppliers for any purpose other than our proper purposes.

...

10.Restrictions on assignment/sub-contracting

The organisation may freely assign, delegate, subcontract or otherwise transfer its rights and obligations under this agreement to any company with which it may merge or to any company to which it may transfer its assets an undertaking, provided that it gives prior written notice to you. You may not assign this agreement or any of your rights and obligations under it to an agent or subcontractor.

18. Intellectual property

The complete copyright in any work done by you in the course of providing your services to the organisation shall vest in the Organisation. Specifically, all inventions, improvements, system developments and enhancements made by you in the course of providing the services shall belong to the Organisation, which reserves complete freedom to decide what action, if any, should be taken in respect of any such invention, improvement, systems development or enhancement. Furthermore, you will do anything reasonably required of you by the Organisation (at the Organisation's expense) to seek and obtain Patent protection for any invention and to defend or protect all inventions and the right and title of the Organisation to them.

19. Business relationships

...

You are strictly forbidden from making any contact whether formal or informal, written or oral, with any of the Organisation's past, current or prospective suppliers or clients/customers With whom you have had contact in the course of providing the services or about whom they have had access to confidential information in the course of providing the services, for any purpose other than for the legitimate business interests of the organisation.

...

25. Non-exclusivity of services

Subject to the services being completed on time and to the satisfaction of the organisation, there is no restriction on your working for third parties whilst this agreement is in force, other than for those who are in competition, either directly or indirectly with the organisation. However the provision of services to other clients must not involve the use of the organisations time equipment, property or any other resource or facilities. Immediately it comes to your knowledge that any business relations are being contemplated or made by the organisation with any firm, company or body in which you have an interest (financial or otherwise), you must disclose this to the organisation. You will not, during the period of this agreement, introduced any other person, firm, company or organisation business of any kind with which the organisation is able to deal, and you will not have any financial interest in, or derive any financial or other benefit from, contracts or transactions entered into by the organisation or any associated employer with any third party without first disclosing such interest or benefit to the organisation."

76. The 'contractor agreement' also contains restrictive covenants that are broad both in nature and in temporal scope. If, before the expiry of the covenants, the individual accepts an offer of employment or appointment, the individual must provide the identity of the new employer to the respondent as soon as possible.
77. The claimant raised concerns with Melany Carter-Groves about the new contract terms and Melany Carter-Groves offered to discuss her concerns. They met, virtually, on 27 June 2024.
78. Following that meeting the claimant emailed Melany Carter-Groves on 27 June 2024:

"Thanks for meeting with me today and offering to talk about my concerns with the new contract changes. I appreciate it. One big issue for me is having to send an invoice every month and handle my own taxes, which I am not willing to agree to.

The new contract feels like it's halfway between a normal full-time job and freelancing but without the benefits of either. I've been told to share my concerns so we can find a solution, but it seems like these changes will happen regardless, so I don't really see how this can be resolved, but I'm happy to try.

What will happen next? If I don't agree to the contract changes? Does that mean I'll be let go?"

79. Melany Carter-Groves replied on 27 June 2024:

“Thanks for reaching out. And you're right that these changes need to happen. However, what I'd look to work on with you is how to lessen the impact.

As an example

- Invoicing each month - One option here is for us to create all of your invoices for the quarter, half year or the year in one go and submit them once. We can then process them on a monthly basis without your input.
- Handling taxes - I can take you through a detailed step-by-step of how to do this and also collaborate with you on specific dates and action that needs to be taken. Tax filings for this kind of arrangement are much more straightforward than they are for a traditional freelance setup.

In terms of the formal process, there are a few steps that can happen before pure dismissal. You can find the details of the process here: <https://www.acas.org.uk/changing-an-employment-contract/advice-for-employees>

one the ideal scenario is dash getting to the bottom of each of your concerns and find middle grounds/ solutions that work. This is the consultation stage and I know it might seem pointless, but if you have a look at the ACCA's website, there is a lot of information on the importance of this stage of the process for making things work for all parties involved. To working under protest dash this is where the changes are imposed by a deadline but you are still employed and working to find solutions with your employer 3 dismissal or resignation this is the last resort when agreement can't be reached.

I hope that makes thing clearer!”

80. The claimant responded on 4 July 2024, asking if there had been any developments/conversations about the claimant's disagreement with the new contracts since Paul David had been back.

81. Melany Carter-Groves emailed the claimant on 4 July 2024:

“Apologies if next steps weren't clear! It's now with you to think in more detail on what parts of the change you're struggling with so that we can work with you to find solutions.”

82. The claimant replied the same day:

“Thanks, ah sure so it's just what I've mentioned, I don't want to invoice for monthly payments and file my own taxes.”

83. On 4 July 2024 Melany Carter-Groves informed Paul David by message that the claimant was 'not happy' about the contract changes. She said that she was working with her to really define the issues aside from just wanting change, so

they can find solutions but she said 'I think churn potential there' i.e. a risk that the claimant might leave. She said she was taking the claimant through the 'formal process'.

84. On 8 July 2024 Melany Carter-Groves emailed the claimant to suggest a meeting:

"I'll set some time for us to talk through on Wednesday. Please have a look at my previous e-mail, there were some suggestions in there around how to make the invoicing and tax process as smooth and low complexity as possible. It would really help the conversation if you could bring more detail about the specific parts of the invoicing or tax process you have concerns with, and some suggestions for alternative solutions."

85. A discussion was arranged for 11.30 on 10 July 2024. On 9 July 2024 the claimant emailed Melany Carter-Groves:

"I've reached out to a few different agencies to help me open (like ACASAs suggested) and I'm just waiting to hear back from them, I don't think I'll have heard back by 11:30 tomorrow so I don't know if I'll have any more to bring to the conversation. I think next week would be better as I should defo have heard back and can bring everything to the meeting."

86. An exchange then took place in which Melany Carter-Groves informed the claimant that she would be on leave the next week but agreed to rearrange till Thursday 11 July so that there was 'clarity' before she went on leave. In her reply on 9 July 2024 the claimant said:

"I'd love to come to conclusion before you go on leave and I should be getting some advice on it all by tomorrow, however tomorrow isn't guaranteed as these things take time. Whilst I appreciate that you need time off at the moment, your time off isn't my deadline and if I haven't got all the relevant advice then I won't be committing to anything beforehand, I hope you can understand."

87. On 9 July 2024 Melany Carter-Groves forwarded the above email chain to Mr. Paul David, who sent the following email in reply to Melany Carter-Groves:

"Yikes. Shall we discuss tomorrow?"

I'm happy to take the convo forward with her and Nathan next week while you're away, assuming we have firm steps in place for different outcomes.

I'd like to better understand what's triggered at her 2-year mark (which I believe is 19 July 2024 — can you confirm?) and how we need to manoeuvre around that date to keep things tidy legally. Have we given enough notice to have the contract shift before/by then? If not, what's our recourse?

I think we need to be firm that next week is final decision either way."

88. A call took place between the claimant and Melany Carter-Groves on 11 July 2024. Melany Carter-Groves' notes of the call (in her holiday handover note to Paul David) record that the claimant 'didn't bring any thought-out solutions to the call despite me asking her to with a few excuses'. The claimant raised concerns about whether the contract was in reality an employment contract: 'The feedback that I have been getting is that this looks an awful lot like an employee contract, so that would have ramifications'.
89. The claimant raised a number of other issues that had arisen during her employment over the last six months which Melany Carter-Groves describes in her handover note as 'part scatter shot gripes/rehashing mixed with legitimate concerns'.
90. Melany Carter-Groves told the claimant that Paul David was going to follow up with the claimant to hear any suggestions that she wanted to make and to finalise the next steps.
91. In the handover note to Paul David, Melany Carter-Groves outlines the next steps:

"Next steps – final meeting with you while I'm away with actual, concrete, thought out suggestions on compromises/sweeteners from her side. Booked in early next week"

92. Paul David and Melany Carter-Groves expressed their frustration with the claimant in a short exchange as follows:

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I hear all this but it's a bit besides the point. Why is she allowing herself to be distracted by things in the past that are out of her control? Why are we entertaining rehashed convos like this with junior staff?

Melany Carter-Groves

I asked her the same question, She is essentially flailing out of frustration rather than engaging in any kind of productive process, and is wasting the opportunity to have a proper consultation before the change. She's aware of, in writing via email, the reasons for the consultation and what it means not to come to a compromise.

93. Between 12 and 14 July 2024 the following message exchange took place between Paul David and Melany Carter-:

Paul David on 12 July 2024: "This feels like critical info we need before we make a decision, How can I pick this up so we can make the most informed decision by the 18th."

Melany Carter-Groves on 14 July 2024:

"I've done the research on this, and the two year rights do come into force even during a notice period, (Olivia's current contract has a notice period of 2 months, so we would have had to give her dismissal notice in May to have avoided this). There are alternatives. Will drop into the main doc."

Melany Carter-Groves on 14 July 2024:

"The piece that's happening now is part of the consultation. Its giving her an opportunity to bring her own solutions and compromises to the table that will allow her to sign before we have to force the changes. This is the most straightforward, least legally risky way of doing things.

Also if she doesn't sign and we do need to force the change, then we are legally sound in demonstrating that she had ample time to come to solutions. I've made it clear to her from early on that the consequence of dragging it out will be that we'll have to force the issue, but finding a compromise works better for morale and relationships."

94. On 15 July 2024 the claimant attended a virtual meeting with Paul David. Paul David said at the start of the meeting that there was a decision to make 'this week' about how they were going to move forward. He asked the claimant if she had made any decisions or had any further thoughts since her conversation with Melany Carter-Groves. The claimant said that she had not realised until her conversation with Melany Carter-Groves that there was some possibility of reaching a compromise. The claimant said that she did not want to leave her job. She said that she was waiting to hear back from a friend and then she would be able to come up with some sensible or reasonable changes to send to the respondent to consider.
95. There was then a discussion of some of the changes the claimant had already thought of including shorter notice periods and extra holiday entitlement In response, Paul David raised the issue of fairness, in that other members of staff had not asked for these changes and that was tricky to navigate. He said that they were already planning to go forward with shorter notice periods and birthdays off but was reluctant to agree to any other individual concessions. He said that the decision needed to be made this week. He said that everyone else was 'rolling into' the new contracts and they had had multiple conversations so they could not expend any more resources on it.
96. He said that 'It's a tricky one for us because we're like, hey, we really value, you, Olivia, we want to stay, but also we can't like it's not a hostage...Like no one, everyone else has signed, everyone else has moved forward and we have had multiple conversations. We haven't given concessions or special privileges as a result of it so it is a really like sticky one for us so I just, I don't need to like think about your role on the team and what fairness means and sort collaboration and ...team spirit... I think we can bend and flex in certain ways, but ...we kind of have to move forward because .. there'll be no agency if we don't make some of the ...changes.'

97. The claimant said something along the lines that she wondered why she was always the one who was 'kicking up a fuss' and everyone else seemed to be fine and she wondered why. Paul David replied that they wanted people to be brave and stand up for themselves but it came at a cost, and the time they could spend having discussions with the claimant had limits because it had costs implications.

98. Paul David concluded by saying:

"So have another night to sleep on it. We will need an answer from you probably tomorrow by end of day about how we're going to move forward because we're going to have to and I know you've pushed back against previous deadlines from Melanie, but we're kind of at the end of the line here. So we're going to need an answer because if we, you know, if your answer is X, then we need to put in place Y and we need to do that Wednesday, Thursday. If your answer is Z, then whatever we can sort of I think the easiest pathway for us is obviously like I said, the entire rest of the team is accepted without concessions. If you're willing to take things that we're already planning to do that are benefits to the team as those concessions, like, you know, having a birthday off, having a one month notice period, then we can sort of move forward with this and you know, have less friction. But as I said, like I'm hoping to hear what you come up with and like talking to your, but like, it's not a hostage negotiation, you know, like, and other people haven't asked so you know, that I think is the most reasonable pathway forward otherwise we're like in different territory and I think Melanie's like talked to you through some of the different options and... You know, how we would, how we'd have to move forward if you if you don't accept."

99. The claimant raised the fact that she had been told the deadline was 24 July. In the discussion that followed Paul David said:

"You have to sign by the [24th] but we have to make a decision this week internally about sort of, so I mean, let me, I'll check with her but I think, yeah, I was in the impression that it was this week so, and it's sort of like the deadlines, the deadline that we set, you know, because we can take action before then, but we'd rather not so we, my understanding is we have until like the middle of this week really. And I need to make a decision by the end of this week.

...

we need to sort of move it forward this week for a variety of reasons internally

The last conversation I had was that we need to sign this by this week so I'll check with her but I'm pretty sure this week like the eighteenth, is the deadline [and] that [the 24th] is the end of the contract, so you know, but that's the date that like the contract shifts either way, you know what I mean so like either that, you know, like that ends and then we like transition the role, but you know, or you've signed on to the new contract does that.

...

So I'm telling you, there's not, there's not a, there's no debate so like I'll need to have an answer from you tomorrow and then we can move forward that's yeah, it's my ultimately my decision and there's multiple different dates going around. The conversation I had with Melanie was, you know, it needs to happen this week. So, and that was before she went on leave on Friday. Even we were chatting about this morning briefly when I told her to take her break so to be again, I want to be firm on this, like we've given you a lot of time, talk to many different people we're offering concessions that we've not offered with anyone else and be like, we need to move it forward because I because it like next week isn't about 'will she won't she' with like Olivia, next week is about moving the agency forward"

100. The claimant then became upset.

101. Before the end of the meeting, the claimant said that she would write down the one month notice period and any other concessions that could be made and the respondent could then say no or yes to that.

102. Following the meeting Paul David messaged Melany Carter-Groves as follows on 16 July 2024:

"There was some confusion and mixed comms around this I believe.

- 1) Do we need her to sign before the 19th (her two year mark)?
- 2) The 24th is just when the new contract comes into force/the old one goes out of force?"

103. On 16 July 2024 the claimant discussed her options with her line manager, Nathan Smith, including signing the new contract or not signing and remaining under her current contract. They also discussed notice periods. The claimant was upset after the meeting on 16 July and Nathan Smith advised her to wait until Melany Carter-Groves returned from annual leave before making any decisions.

104. On 16 July 2024 Paul David emailed the claimant to tell her that he had booked some time for them to meet on the 17 July. He said:

"As discussed, we've spoken about this change with you multiple times and we're keen to reach a final decision this week, with the new contract coming into force next week (on the 24th).

To clear up the confusion around dates:

1. 24 July is when you've previously been asked to sign, aligning to when the new contract comes into force
2. 17 July is your amended deadline to decide (by end of day) whether you'll be signing on with the rest of the team
3. 18 July is when we'll make a final determination on next steps for the role based on whether or not you signed

I mentioned that we desire this additional time to get everything together for the launch of the new contracts this week. I understand this is a slight

change, a few days, from what was previously communicated. That is because I have made the executive decision as the leader of this company not to drag out these conversations any further and because you have said you've mostly spoken to all of your advisors on the matter.

As I said on our call, we need to focus on moving the agency forward this week next week as we're launching into the state of LH bits and the forward-looking vision for the agency. We won't be expanding agency resource is on this matter next week.

A few things that we discussed:

- Paul shared the LH leadership are keen to keep Olivia on the team given her strong design work
- Paul shared that no other team members have refused to sign the contract adjustment
- Paul shared that no other team members of Astra concessions, raising issues of fairness
- Paul clarified that this is not a hostage negotiation but that we're happy to consider options"

105. On 17 July 2026 the claimant sent a reply to Paul David, in which she made the following points:

- a. She felt upset coming out of the meeting and did not feel that she had a safe space to get her points across. She wanted to coordinate future video call communications through Melanie Carter-Groves as the HR representative.
- b. She complained that the deadline in the FAQs document had now been changed to from 24/25 July to 19 July. She said that fairness dictated that a written and verbally agreed upon deadline should be honoured and that it was unfair to change it with only two-days notice.

106. She set out her understanding of the two potential scenarios and outcomes:

- a. She signs the contract by 24 July and transitions to the new terms on 25 July. She suggested the following changes, to be made to everyone's contracts: one month notice period, birthdays off, option to buy extra holiday allowance.
- b. She does not sign the new contract by 24 July, in which case she remains employed under her current contract until a decision or notice is given by the respondent.

107. The claimant said that the introduction of a high pressure situation and sudden deadline change was unfair.

108. She raised concerns about 'potential legal issues':

"I am also concerned about potential legal issues. For instant, the new contracts are essentially still employee contracts. Despite the provision in our contracts allowing us to freelance and work on other projects, the hours we've committed to this company effectively requires us to work four days a week. This implies we can only freelance on Fridays or after hours."

109. On 17 July 2024 there was a meeting between Paul David, Nathan Smith and Melany Carter-Groves in which Paul David informed Nathan Smith that Olivia's role was being made redundant.
110. The claimant attended a meeting on 18 July 2024 with Paul David and Nathan Smith. Paul David started the meeting by asking the claimant if there were 'any updates on her end since they last spoke'. The claimant's reply was 'Nothing more than what I sent in the email sort of about like if that sounds like fair we can meeting in the middle or what the next steps would be like, yeah...'
111. Paul David then informed the claimant that she was being dismissed for redundancy with immediate effect:
- "... I'm sorry this that there's been a lot of back and forth and yeah there's really kind of you know no easy way to have this conversation with you Olivia but I wanted to let you know that your role at little humans has been made redundant as of today. So today will be your last day at LH this is part of a cost cutting measure so I can see, you know, we've had significant cost cutting measures or, you know and the closure of this role is really critical so I'll be sending you a letter after this. You will be paid in lieu of your notice. So you won't have a sort of long notice period to work. I believe that was your preference. So I'll send you a letter after this with everything sort of wrapped up and solidified so you can come, and then mail me next week will follow up just with all the info on your pay packet and things like that so I'm really sorry that this is sort of where we landed with things, but this is something the company needs to do to kind of cut costs and to move forward."
112. The termination meeting lasted just over 5 minutes.
113. The letter dated 18 July 2024 terminating the claimant's employment read as follows:
- "Thank you for your service to our agency and our mission of humanizing marketing since 2022. We're incredibly grateful for the work you've done as part of our Design team.
- This letter follows up the conversation earlier today and confirms that you are no longer employed by Literal Humans as of 18 July 2024.
- Your role has been made redundant. Our agency has enacted significant cost-cutting measures of which the closure of this role has become critical to our future growth.
- You will be paid in lieu of your notice period (one month's pay) —as the consultation period you've undertaken over the past month with our senior leadership has been applied as the first month of your contractual two-month notice period."
114. On the evening of 18 July 2024 at 7pm Paul David posted an advertisement for a 'mid-weight designer' on LinkedIn with a job description materially identical to the job description in 2022 when the claimant was recruited. The salary for the

new position was advertised at £20k-£35k annual equivalent, with a 36 hour 4 day working week.

115. That job advert was taken down shortly after it was posted. The respondent ultimately recruited a more junior designer on a lower rate of pay (approximately half the claimant's salary) working 27 hours a week under the new contractor contract.
116. The respondent has provided a table which Paul David says shows the number of employees who accepted the contract changes in July 2024. That list includes Akili Lamour, who was recruited following the claimant's dismissal and was never on the original contract. It includes Paul David himself. It also includes Seetal Rihal and Anthony Stratton who started their employment with the respondent in early June 2024 and who were hired under the contractor contract. It includes Carl McDonald who left on 24 July 2024.
117. It is unclear whether Wilhelmina Chik and Maya Dharampal-Horny were employed before the change in contract – the July 2024 board pack and the August 2024 Monthly Business Review strongly suggest that they were recruited to start work in August 2024.
118. A letter from the respondent's accountants dated 7 August 2024 states:

"I can confirm that the workers for Literal Humans being paid as freelancers in the UK is allowed based on the UK GAAP FRS 102, which is what we use to prepare the management accounts and file the final accounts with HMRC and Companies House.

Provided the workers are made aware of the arrangement and their responsibilities, there are no further requirements by Literal Humans Ltd"

119. A letter from the same accountants dated 27th November 2025 states:

"During the relevant period, I acted as the company's external accountant. From the financial information I prepared and reviewed, the business was operating on tight margins and facing pressure to control operating costs in order to maintain profitability and loan covenants.

I was aware that the company explored different cost management measures, including a shift from a PAYE staffing model to contractor arrangements. My role at that time was limited to preparing the financial figures and accounts that reflected the company's position. I was not involved in HR decisions, staff communications, or the implementation of any contractual changes."

Discussion and conclusions

Wrongful dismissal

120. This claim is not resisted. The claimant was entitled under her contract to two months' notice of termination. She was not given any notice of dismissal. She was paid for one month in lieu of notice. This claim succeeds.

Was the dismissal wholly or mainly attributable to a redundancy situation or was redundancy the sole or principal reason for dismissal?

121. First, we do not accept that the claimant was dismissed because they had decided they no longer needed a designer i.e. we do not accept that the dismissal was wholly or mainly attributable to fact that the requirements of the respondent business for employees to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish (was the claimant's role redundant). Second we do not accept that the respondent had decided that the role should no longer be carried out by an employee i.e. and we do not accept that the dismissal was wholly or mainly attributable to the fact that the requirements of the respondent business for employees to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish.
122. In relation to the first issue, we do not accept that the reason for dismissal was because the respondent had reached a decision that there was no longer the need for anyone to carry out the claimant's role. None of the board packs or Monthly Business Reviews make any reference to any consideration of or any proposal to manage without a designer, or to manage with a less senior designer. There is no mention at all in any of the financial documentation of any possibility of redundancies. There is no mention of the possibility of the claimant's role being redundant in the private messages between Paul David and Melany Carter-Groves. There is no reference to it in any correspondence to the claimant. It was not mentioned in any of the meetings with the claimant prior to the termination meeting on 18 July 2024. The meetings were about changes to the claimant's contract not about proposals to make her role redundant.
123. Paul David's note of the meeting on 17 July 2024 states that 'LH leadership are keen to keep Olivia on the team'. That is inconsistent with an intention or genuine business need to make the role redundant. The first mention of a potential 'redundancy' was later the same day when Paul David informed Nathan Smith that the claimant's role was being made redundant. The claimant was then told that the role was being made redundant, with immediate effect, in the meeting on 18 July 2024.
124. Although he later removed it, within hours of dismissing the claimant Paul David had placed an advert for a designer using a materially identical job description to that to which the claimant had been recruited, on the same hours and working pattern, albeit at a slightly lower salary.
125. Given the background of the contract changes, the lack of prior reference to any potential redundancy situation and the respondent's statement on 17 July that it wanted to keep the claimant, we do not accept that the reason why the claimant was dismissed was because the respondent no longer required her role. We do not accept that the reasons given in the meeting of 18 July 2024

and in the letter confirming dismissal was the genuine reason for dismissal. We discuss below what we have determined was the reason for dismissal.

126. We accept that when the respondent did eventually recruit a designer, it recruited a designer at a junior level. That does not alter our view as to what reason was in the respondent's mind, at the time, for dismissing the claimant.
127. In relation to the second issue it is necessary to determine if the respondent had a reduction in the need for *employees* to carry out the claimant's role. If the reason for dismissal was the fact that the respondent was terminating all its employment contracts and engaging those individuals as independent contractors that would be a redundancy situation because there would be a reduction in the requirements of the business for *employees*.
128. FRS 102 relates to financial reporting permissibility and does not govern employment status.
129. The new contract is labelled as a 'contractor agreement'. It expressly states it creates an 'independent contractor-client relationship' and states that it does not make the individual an employee of the organisation.
130. We have concluded that other factual features, set out below, indicate that as a matter of law the agreement is to be classified as a contract of employment. In those circumstances, the term asserting that it is an 'independent contractor-client relationship' does not make any difference.
131. We have reached that conclusion for a number of reasons. First, many of the written terms of the contract itself are strongly indicative of a contract of employment. There is mutuality of obligation. There is a requirement for personal service (see clause 10). There is significant control and integration into the organisation:
 - a. the individual is integrated into a management hierarchy and contractually obliged to obey all lawful and reasonable directions or instructions given to them by their manager
 - b. they are contractually obliged to comply with all the respondent's rules, regulations and policies
 - c. they are required to devote the whole of their time during normal working hours to the carrying out of their duties under the contract.
 - d. there is a set working pattern (36 hours per week, exclusive of lunch to be worked Monday to Thursday)
132. Although the individual is permitted to work for third parties, this could not, for example, be done every Friday, because on weeks in which there is a bank holiday the individual is required to work for the respondent on a Friday. Further there are extensive restrictions and conditions attached to working for other companies, including a prohibition on working for direct or indirect competitors and informing the respondent of the identity of any new employer as soon as possible. The agreement also contains broad restrictive covenants.

133. The contract includes holiday entitlement. It is open ended subject to two months notice on each side, which is a long notice period. Although the individual is required to submit invoices, the agreed pay is monthly and annualised. All these factors point towards it being a contract of employment rather than a genuine independent contractor-client relationship.
134. The new contracts were intended to replace the existing contracts of all existing employees with the single aim of saving money by avoiding the obligation to pay pension contributions and employer's national insurance contributions. No other change was desired or intended. Employees were explicitly given assurances about the lack of change:
- This change will not affect your job security or opportunities for career advancement.
 - Your workload and working hours will be the same as under your previous contract.
 - We will still be investing in training and upskilling the team. This cost-saving change will give us the opportunity to invest more in all of you
135. The respondent informed all employees that:
- “This transition will not affect your employment rights and will count as continual employment despite the change in contract. This forms the main difference between this arrangement and the usual hourly rate freelancer arrangement.”
136. Evaluating the evidence as a whole, including the written terms of the contract, we conclude in reality the relationship that the parties intended to create was, as a matter of law, a contract of employment and the parties calling it a 'independent contractor-client' relationship does not make it so.
137. For those reasons we conclude that claimant was not dismissed because the requirements of the respondents for *employees* to carry out work or a particular kind had ceased or diminished.
138. The claimant is not entitled to a redundancy payment.

What was the reason or principal reason for dismissal?

139. It is clear that the respondent was in significant financial difficulties in the months leading up to May 2024. This is clearly set out in our findings of fact. We accept that the respondent needed to save money. The board papers and Monthly Business Reviews show that a decision was taken to save money by making changes to the employees' contracts to avoid paying pension contributions and employer's national insurance contributions. The claimant did not agree to those changes. We find that the principal reason for dismissal was because the claimant had not, by 17 July 2024, agreed to that change.

140. The panel was divided as to whether the trigger for dismissal on that particular date (as opposed to the principal reason for dismissal) was Paul David's desire to avoid the claimant reaching two years' service.
141. One of the members of the panel took the view that the message from Melany Carter-Groves on 14 July 2024 shows that Paul David knew that the claimant would have two years service in any event and that this was not the trigger for dismissal on 18 July. That message said that 'the two year rights do come into force even during a notice period'. The member's view was that the trigger for bringing the deadline forward was that Paul David had simply had enough of the discussions.
142. The Judge and the other member of the tribunal took the view that, on the balance of probabilities, the claimant's approaching two year anniversary was the reason why the deadline for agreement was brought forward to 17 July and was the trigger for the dismissal occurring on 18 July. This view was based on the reference in the messages to manoeuvring around the 2-year mark, Paul David's reference in the meeting of 17 July to his discussions with Melany about when the decision 'needs to happen' and the sudden change from ongoing discussion to dismissal for redundancy the day before the claimant reached two years' service.
143. Given that the panel agreed on the fact that the principal reason for dismissal was, in any event, the claimant's failure to agree to the new terms, we did not need to resolve the question of whether the fact that the claimant was approaching two years' service triggered the dismissal on a particular date.
144. We accept that the reason for dismissal falls within the category of some other substantial reason for dismissal.

Was the reason or principal reason for dismissal that the claimant had made a protected disclosure?

145. Although there was a disagreement on whether the trigger for bringing forward the deadline was the approaching two-year date, the panel was unanimous in our view that the decision was not influenced by the claimant's statements about employment status under the new contracts in the meeting of 11 July and in the email of 17 July 2024.
146. We accept that the reason why the claimant was dismissed was because she did not agree to the change to her contract. The email of 27 June shows that dismissal was a potential outcome before the alleged protected disclosures took place. There is no reference in the discussions between Melany Carter-Groves and Paul David to the claimant having raised concerns about employment status. Nathan Smith does not say that there was any mention of this in the meeting on 17 July 2024. The panel was split as to what triggered the bringing forward of the deadline, but the tribunal unanimously concluded that it was not because of the alleged disclosure made in the claimant's letter of 17 July.
147. We accept that there is unlikely to be direct evidence of an unlawful ulterior motive for dismissal and that we should be ready to make an inference of motive

from the evidence. In particular we have considered whether to make an inference from the timing of the email and the move to dismissal. Taking into account all the communications and chronology we decline to draw such an inference.

148. In the light of that finding we do not need to determine whether or not the claimant made a protected disclosure.

Was the dismissal for some other substantial reason fair?

149. We have to consider whether the respondent acted reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating the failure to agree to the new contract terms as a sufficient reason to dismiss the claimant.
150. We note first that this is a small employer. The respondent had limited administrative and human resources support - from one individual, Melany Carter-Groves. We take this into account when considering fairness.
151. We accept that there was an underlying genuine business need to save money, and that the respondent was attempting to avoid the need for more drastic action, including for example redundancies, by saving money on pension contributions and employer's national insurance contributions. We accept that there were, in principle, significant financial advantages to the employer in avoiding paying national insurance and pension contributions.
152. It is not inherently unreasonable for an employer to seek to reduce staffing costs, including costs such as employer National Insurance contributions and pension contributions, as part of a business reorganisation.
153. However, in this case there was no genuine alteration to the substance of the working arrangements: the contract remained, in reality, a contract of employment. The contract also contained a clause which purported to transfer to the individual the risk and financial consequences of HMRC determining that the arrangement was one of employment, in the following terms:

"You undertake to indemnify the organisation and to keep it indemnified against:

- any income tax (whether under PAYE or otherwise) or primary National Insurance contributions including any interest, penalties or costs incurred in connection with the same, which may at any time be levied, demanded or assessed on the Organisation by HMRC or any other statutory body as a result of the provision of your services;
- any reasonable legal fees or other costs incurred by the organisation in enforcing its rights under this clause."

154. There is a substantial overlap between the tests for employee status in employment law and for tax purposes. Given the terms of this contract and our

analysis set out above, in the light of this clause accepting the contract exposes employees to the risk of bearing PAYE and primary National Insurance liabilities (together with interest, penalties and enforcement costs) should the HMRC conclude that the relationship was, in reality, one of employment. That represents a very significant disadvantage to employees in accepting this change in terms and conditions.

155. The agreement also involves the employee agreeing to the employer ceasing to pay employer pension contributions, when, under auto-enrolment provisions, they were almost certainly still obliged to provide. That is a significant disadvantage to the employee.
156. In our view the disadvantages to the employees outweighed the advantages to the employer. The respondent imposed on its employees contracts that were in reality contracts of employment but which were labelled as independent contractor-client agreements in order to avoid the respondent's legal responsibilities as an employer. No reasonable employer would take that approach. To dismiss an employee for refusing to agree to that proposal is not, in our view, within the band of reasonable responses.
157. Ordinarily, the fact that the majority of employees accepted the variation is relevant to reasonableness. However, the weight to be attached to this factor in this case is limited. The respondent presented the new terms on the basis that the relationship would become a genuine independent contractor-client arrangement, thereby justifying the transfer of the HMRC risk of on to the individual, while asserting, at the same time, that 'this transition will not affect your employment rights and will count as continual employment despite the change in contract'. Those propositions are incompatible. In the light of those inconsistent communications, we do not consider the fact that most employees accepted the change to be a reliable indicator of reasonableness.
158. In terms of the procedure followed by the employer the band of reasonable responses applies: we have to decide whether an employer, of this size and administrative resources, could reasonably have adopted this procedure. We find that the employer did not adopt a process that a reasonable employer could have adopted.
159. We accept that the respondent made efforts to engage with the claimant to discuss her objections to the proposals, but we do not accept that there was a genuine and meaningful consultation in which the respondent was prepared to reconsider their decision to impose the contractual changes.
160. Only one telephone call took place before the claimant was given notice of the introduction of the new terms and conditions. By that time, the decision to implement the change had already been taken. The telephone call, on 25 June 2024, was not a consultation, it was the provision of information.
161. A number of meetings and some email exchanges did take place after notice had been given of the implementation of the changes, but, as the email from Melany Carter-Groves on 27 June 2024 makes clear, the respondent had already

decided that “these changes need to happen” and that the aim of the consultation process was to work with the claimant on “how to lessen the impact”.

162. We accept that the respondent helpfully referred the claimant to the ACAS website, and that Melany Carter-Groves made some attempt in that email to set out the process and what the potential outcomes might be, including stating that the process might end in dismissal or resignation as a last resort.
163. There was also a willingness, at first at least, to consider proposals for ‘sweeteners’ to lessen the impact and to help the claimant with the practical consequences of working under the new contract.
164. However, as we have found above, the information provided, to the employees was misleading, and therefore the basis of the consultation, such as it was, was not reasonable.
165. Finally, while the discussion of the proposals made by the claimant was ongoing, and before the deadline that the claimant had initially been given the respondent abruptly and without prior notice suddenly moved to a dismissal meeting. The claimant came to the hearing expecting a discussion about finding some middle ground and was suddenly and without warning dismissed. Not only that, in that meetings and in writing she was given a reason for dismissal that had not previously been mentioned and which we have found was not the real reason for dismissal.
166. Whether it was because the claimant’s two years’ service was approaching or whether the respondent lost patience and got frustrated with the claimant, it was unfair to suddenly move to dismissal without giving the claimant the opportunity to make up her mind whether or not to agree to the new terms knowing that dismissal was the alternative.
167. Looked at as a whole, even taking full account of the small size and administrative resources of the respondent, the procedure adopted fell outside the range of procedures that could be adopted by a reasonable employer.
168. For all those reasons, in accordance with equity and the substantial merits of the case, in the circumstances (including the respondent’s size and limited administrative resources) we conclude that the decision to dismiss fell outside the band of reasonable responses and that the respondent acted unreasonably in treating the claimant’s failure to accept the new contract as a sufficient reason for dismissal.

Conduct and contributory fault

169. The respondent relies on the claimant’s conduct as follows:
 - a. Rude and insubordinate behaviour towards leadership
 - b. Non-compliance with the consultation process
 - c. Reduced work output and performance deterioration
 - d. Failure to engage constructively during restructuring discussions.

170. Our findings of fact do not support any finding that the claimant did not engage constructively during the restricting discussions nor that she did not comply with any consultation process. We reject the submission that anything the claimant did during the process amounts to rude and insubordinate behaviour. There is no evidence to support a finding that the claimant's work output reduced or that her performance deteriorated.

171. There is no conduct that would enable us to make any reductions to the basic or compensatory award for conduct or contributory fault.

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172. We accept that the respondent was in financial difficulties. There was a clear business need to reduce costs. We find that there is at least the potential that the respondent could have proposed a different business reorganisation that did not involve imposing contracts that were in reality contracts of employment but labelled as independent contractor-client agreements to avoid the respondent's legal responsibilities. We find there is also the potential that the respondent would, as an alternative, have had to consider redundancies. Both of these situations are some way from the current circumstances. Taking into account the financial position of the respondent we find that there was a 10% chance that, if the respondent had acted fairly, the claimant would have been dismissed in any event.

ACAS code on discipline and grievances

173. We find that the ACAS Code does not apply and therefore no uplift is made.

Next steps

174. The matter will be listed for a remedy hearing and case management orders issued.

Approved by Employment Judge Buckley

Date 3 March 2026

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