



EMPLOYMENT TRIBUNALS

Claimant: Ms D Jakus-Szampor

Respondent: Lee-Anne Plumb R1
Alexanderplumb Ltd (in creditors voluntary liquidation) R2

Heard at: Watford Employment Tribunal (In Public; In Person)

On: 1 and 2 December 2025

Before: Employment Judge Quill (Sitting Alone)

Appearances

For the Claimant: In Person
For R1: In Person
For R2: No appearance or representation

Oral judgments, with reasons on liability and remedy and costs were given during the hearing. Written reasons were requested.

WRITTEN REASONS

The Hearing and the Evidence

1. The company Alexanderplumb Ltd, R2, played no part in the hearing, although an ET3 response had been submitted on its behalf. The individual, Lee-Anne Plumb, R1 attended the hearing, and gave evidence and made submissions.
2. This was an in person hearing. The only other witness, apart from R1, was the Claimant.
3. No agreement between the parties over a bundle had been reached. However, a fair hearing was possible and there was no reason to postpone.

The Claims and The Issues

4. One of the main disputes for me to resolve was the identify of the Claimant's employer.
5. The Claimant alleged unfair dismissal as well as breach of contract (lack of notice of dismissal), breach of the Working Time Regulations 1998 and failure to supply written particulars of employment.

The Findings of Fact

6. I make the following findings of fact on the balance of probabilities having considered all of the evidence presented during the hearing.
7. There was a business known as Physique Gym. There is a dispute between the parties about who owned and operated Physique Gym and/or who was the employer of the staff who worked there.
8. The second respondent to these proceedings is a company called Alexander Plumb Ltd ("R2"). That company had two directors: Lee-Anne Plumb ("R1"), who is the first respondent to these proceedings, and Chris Alexander, who is not a respondent. Although Chris Alexander was named in the grounds of claim as the third respondent, he was not included in the ET1, and, as far as I am aware, the claimant did not go through early conciliation naming him as a prospective respondent.
9. Alexander Plumb Ltd is in creditors' voluntary liquidation. Insolvency practitioners were appointed around 20 February 2025. The insolvency practitioners sent an email to the tribunal on 1 December, stating that they did not intend to participate in the final hearing scheduled to take place on 1 and 2 December 2025. This was a reiteration of what had been previously stated, according to the email.
10. During the course of the hearing, I was provided with a trail of emails between the claimant and the insolvency practitioners, which made clear that, from no later than May 2025 onwards, the insolvency practitioners had been aware of this hearing but had chosen not to take part in it. I make no criticism of R1's insolvency practitioners for their stance. Their decision is in line with common practice.
11. The claimant's case is that Ms Plumb was her employer. Ms Plumb's case is that the company was the claimant's employer.
12. The claimant started work at the business known as Physique Gym around January 2020 and continued to work there until around July 2024. The claimant

brings a claim in relation to holiday pay, alleging that she had no paid time off at all during the entirety of that period, in breach of the Working Time Regulations.

13. The claimant does not allege that there was any contractual entitlement to paid holiday.
14. On the Claimant's case, she was never issued with a written contract of employment, and one of the claims she brings is an allegation that there has been a breach of the requirement to supply her with written particulars as required by section 1 of the Employment Rights Act 1996.
15. The claimant alleges that she was dismissed by the employer and claims unfair dismissal. The grounds of claim argue, in the alternative, that there was an actual dismissal or, if not, then a constructive dismissal. The claimant also argues entitlement to an ACAS uplift.
16. The claimant is originally from Hungary. Her sister worked at the gym, and the claimant learned from her sister that there was a potential work opportunity. She met Ms Plumb for the first time, and, as a result of that discussion, she started working at the gym. The claimant was told that she was to be regarded as self-employed and that she was to submit invoices, which would then be paid.
17. The invoices produced by the claimant were addressed to Physique Gym. In other words, they were not specifically addressed by name either to R1 or to R2. The invoices were sent by email to R1, Lee-Anne Plumb, at a personal Gmail address. In other words, the domain name did not include the name of the gym.
18. The claimant regularly worked several days per week. The brief snapshot of invoices, or extracts from the totality of invoices, provided to me does not demonstrate that the Claimant always worked six days a week. The specific number of days that she worked varied. After about a year or so, the claimant was required to wear a Physique Gym branded uniform.
19. From around November 2023 to around June 2024, Ms Plumb was not usually at the gym premises. Prior to that, it was usually Ms Plumb who notified the claimant which shifts the Claimant would be working. However, between November 2023 and June 2024, it was usually Mr Alexander who notified the claimant of her shifts.
20. When the claimant did not work, she was not paid for that day. She was only paid for the hours she actually worked.
21. The claimant was not issued with any written documents that described her as an employee or gave any statement of particulars of employment.

22. During the period November 2023 to June 2024, the claimant's understanding is that she was given a promotion by Chris Alexander. The claimant is aware that this is not something that Ms Plumb authorised or agreed to specifically.
23. In messages, Ms Plumb told the claimant to obtain specific information from Mr Alexander about the new duties.
24. Although Ms Plumb suggests that, on the company premises, there were copies of contracts or written statements of terms and particulars issued to people, including the claimant, my finding of fact is that no such documents were issued to the claimant. This does not necessarily mean that Ms Plumb was deliberately lying, but whether she genuinely believes that such a document existed and is now either in the hands of the insolvency practitioners or else has been destroyed by Mr Alexander, my finding is that that is not the case, and that no document was issued to the Claimant in the first place.
25. To the extent that it was suggested by R1 that the claimant was paid via PAYE (by R2, or at all), my finding is that that is not the case (although I note what is written in the Grounds of Complaint). The claimant was treated as being self-employed. Her tax returns bear that out. The reason that the Claimant's tax returns show her as self-employed is that that is what she was told to do by the employer. There was no intention on the Claimant's side to mislead HMRC.
26. While I accept what Ms Plumb says about the fact that she is not in a position to have immediate and direct access to the company's records, including any PAYE records, I have to make the decision based on the information and evidence that I have. There was nothing in principle stopping Ms Plumb from asking the insolvency practitioners to provide her with the documents, or alternatively asking the Employment Tribunal to make an order that the insolvency practitioners provide these documents. The claimant's own account is that she received no payslips, and I accept that that is truthful and accurate. Other than R1's oral assertions, there is no evidence that the Claimant was paid via PAYE and there is sufficient evidence that she was not paid by that method.
27. Those are the conclusions I have reached based on all the oral evidence and contemporaneous documents. My assessment is that those conclusions are also supported by the material attached to the claimant's email of 17 May 2025 at 3:02 am. Among the attachments to that email, the claimant produced a document headed "Brief Summary," which stated that she had raised a grievance. Within that document, under the heading "Failure to Provide a Contract," there are screenshots of WhatsApp messages.
 - 27.1 In one discussion with another individual, Max, Ms Plumb wrote that staff had the option to be either PAYE or self-employed.

- 27.2 Max asked whether they received holiday pay, and Ms Plumb answered, “Not on a zero-hours [contract].” In other words, the answer was “no”.
- 27.3 Max said he did not recall reading or signing a contract, and Ms Plumb replied that Max had not signed a contract, which was why he did not recall one.
- 27.4 Addressing other individuals, she said, “Mia and Jack, you don’t have one either,” and finally, “And little Jess, you don’t”. The message continued: “None of you are contracted; you are all zero-hours, in case you’re wondering.”
28. In terms of the fact that the WhatsApp group was named “Physique Staff,” I do not find that to be of any particular assistance to me in relation to the issues which I need to decide. However, the contents of the exchanges speaks for itself in relation to what R1 was saying (regardless of whether she was speaking as an individual, or as a representative of R2) at the time, and is entirely consistent with my finding that the Claimant was not paid via R2’s PAYE system.
29. Lee-Anne Plumb and Chris Alexander had been a couple. However, in around 2023, their personal relationship ended, and a dispute about the business began. Those disputes are matters for other courts or forums to resolve.
30. It suffices to say, for present purposes, that I accept that Ms Plumb had a genuine reason for not attending the gym between November 2023 and June 2024.
31. I also accept that R1 was not in day-to-day control of allocating shifts to staff during that period. Allocation of shifts was done by Mr Alexander or delegated by him to other people, such as the claimant.
32. Around January 2024, Ms Plumb, gave some instructions to the staff, including the claimant. The claimant objected to these instructions, as she regarded them as being outside her responsibilities. On the claimant’s case, she was effectively being asked to spy on Mr Alexander’s girlfriend and to report to Ms Plumb when that person attended the gym. On Ms Plumb’s case, she was simply reminding the claimant that part of her duties, and those of other staff, was to ensure that there was a proper record of who attended the gym and of what payments they did make, or were supposed to make, to the business.
33. In subsequent correspondence, Ms Plumb wrote to the claimant stating: “I would suggest you read your contract again, as you are in fact misinformed or misunderstanding.” The message continued: “You are, in fact, under an obligation to give information and carry out duties as required **by the company and its directors** within the scope of your duties.” (My emphasis). It also said: “If you would like a copy of your contract, please do let me know, and I will provide you with one.”

34. In due course, a letter dated 5 February 2024 was sent. The heading on the letter stated that it was from Alexander Plumb Ltd, trading as Physique Gym, and gave the address of the gym. The signature read "Yours sincerely, Lee-Anne," and indicated that it was for and on behalf of Alexander Plumb Ltd, trading as Physique Gym. Within the body of the letter, the allegation was that a director of Alexander Plumb Ltd had given lawful and reasonable instructions to the claimant, and the Claimant had failed to carry out those instructions. Ms Plumb was referring to herself when she referred to "director" within the letter, and the Claimant knew that when she read it.
35. The letter included the sentence: "Possible consequences of failing to carry out lawful and reasonable duties could be a written warning or, in cases of gross misconduct, more serious disciplinary action."
36. The Claimant believes that the letter contained an unjustified accusation because she, the Claimant, was accused of failing to carry out an instruction on 21 January, which was a day she says she was not working. However, the claimant was not surprised that the letter was on headed notepaper referring to Alexander Plumb Ltd. She had seen other communications using similar notepaper in the past. Her recollection is that Ms Plumb would send formal letters using that letterhead, whether on paper or electronically, during the course of the Claimant's employment at the gym.
37. On 22 May 2024 (page 8 of the bundle of documents), Ms Plumb wrote: "Before I take things further, you have a responsibility to carry out any reasonable and lawful tasks asked of you **by the company**." (My emphasis).
38. On or around 26 May 2024, the claimant was sent a message from the email address info@physiquegyms.co.uk. It was signed "Warm regards, Lee-Anne." In other words, the message had been written by R1. The email gave details of three alleged cash transactions and implied that the claimant was suspected of not having recorded those correctly, or at least that she would be asked to explain her actions in connection with these alleged transactions. The email invited the claimant to a meeting on Tuesday, 28 May 2024, at 9:00 a.m.
39. On or around 28 May, the meeting took place, and there was a follow-up email from R1 to the claimant commenting on the meeting. The final paragraph stated: "You have been suspended from work for three days without pay while investigations into this matter are concluded. You will be notified by close of business on Thursday what action will be taken."
40. Later the same day, Mr Alexander wrote to the claimant saying: "Please ignore Lee-Anne's email; she is talking rubbish." The claimant replied to Mr Alexander's email to say: "Thank you for the clarification."

41. Ms Plumb wrote: "You are under investigation. You are suspended from work for three days. Failure to adhere to this will not be tolerated, and you risk further disciplinary action." This was in response to the Claimant informing R1 that she had been in touch with ACAS and, based on her understanding of ACAS advice, where one owner alleged that she was suspended and another owner was willing to give her work, she was entitled to work as normal.
42. Ms Plumb responded from the info@physiquegym.co.uk address, stating: "What you fail to understand is that you are under investigation for colluding with the other owner to misappropriate company funds, which is a criminal matter and considered theft." The email continued: "If you choose to go into work, we will have no option at this stage but to involve the police."
43. On 30 May, Ms Plumb wrote to the claimant to say that she was invited to a disciplinary meeting on 3 June 2024 at 9:00 a.m. The email stated that the claimant was suspended until that meeting took place.
44. On 31 May, Mr Alexander wrote to the claimant to say that she did not need to attend a disciplinary meeting and that she had followed his instructions and had not acted inappropriately.
45. The claimant continued to attend work during the period 29 May until around 18 or 21 June 2024 (or thereabouts) and the Claimant did not attend the proposed disciplinary meeting on 3 June 2024.
46. On or around 18 June 2024, the claimant was prevented from working in her usual role at reception by R1, but the Claimant continued to attend the premises. On 21 June, Ms Plumb stated that she was withdrawing the claimant's Saturday shifts.
47. There was then a gap in late June when the claimant did not attend work. Mr Alexander was away from the business, on holiday, at that time. However, on or around 1 or 2 July 2024, the Claimant attended the premises along with Mr Alexander. A verbal disagreement took place between the claimant and Ms Plumb, and the claimant did not return to work again afterwards.
48. On the claimant's case, Ms Plumb accused her of helping Mr Alexander steal money from the business. On Ms Plumb's case, that is indeed what the claimant was doing. On Ms Plumb's case, the claimant and Mr Alexander were encouraging people to resign their membership and instead make payment directly to them (for example by way of a card machine).
49. The claimant does not allege that any words of express dismissal were used by Ms Plumb on that date (regardless of whether it was 1 or 2 July 2024). The Claimant does not allege that words of express dismissal were uttered by Mr Alexander or by anyone else acting on behalf of the company.

50. On 3 September 2024, the claimant commenced early conciliation against each of Lee-Anne Plumb and Physique Gym. In terms of the latter certificate, it has already been decided — and I agree — that the reference to Physique Gym is intended as a reference to Alexander Plumb Ltd.
51. On 1 November 2024, a claim was presented. Early conciliation ended on 15 October 2024. Therefore, for any claims about alleged dismissal, the claims are in time, provided the dismissal occurred on or after 4 June 2024.
52. Similarly, for any claims about holiday pay or entitlement to be paid in lieu of holiday on termination of employment, the claims are in time, provided the termination date was on or after 4 June 2024.
53. The same applies for breach of contract claims in relation to notice.
54. The Grounds of Complaint is a document which the Claimant adopted as part of her evidence in chief and she swore to the contents. It was drafted on her behalf by a barrister and bears the date 27 August 2024. That document included:
 30. The Claimant felt unable to return to work due to the circumstances created by the [Ms Plumb] after 2nd July 2024.
 31. The Claimant was not formally dismissed, but it was clear by [Ms Plumb] that she was not required at work, and she was forcibly prevented from undertaking her contractual role by [Ms Plumb].
 32. The Claimant claims that she was either dismissed or was constructively dismissed by [R2] and [R1]. For the avoidance of doubt, the Claimant pleads the claims in the alternative as due to the matters set out above, and the clear dispute between the owners, the circumstances of the Claimant's dismissal were not clear.
55. The document (throughout, including at paragraph 37 and 38) referred to both actual dismissal and constructive dismissal as alternatives. There was no communication of words of resignation from the Claimant to either respondent.

The Law

56. A contract is an agreement reached between two parties. Classically, there would be an offer by one party and an acceptance of that offer by the other, resulting in a legally binding agreement between the two parties.
57. When an agreement is reached between parties and a claim is brought to the Employment Tribunal regarding the alleged contract, the Tribunal will interpret the contract by applying the principles laid down by the Supreme Court in Autoclenz v Belcher [2011] UKSC 41 and in Uber v Aslam [2021] UKSC 5.
58. In short, the assessment will take account of the possibility of unequal bargaining power, and the Tribunal will determine what was actually intended (when examined objectively) as the agreement between the parties, regardless of

whether one party — the alleged employer — arranged one or more documents to give the appearance that the legal effect was different from the true agreement.

59. Among other things, the mere fact that an agreement states the claimant is self-employed will not prevent the Employment Tribunal from analysing the actual reality and, if appropriate, deciding that the contract falls within section 230 of the Employment Rights Act 1996. It could be a contract of employment or, alternatively, a “limb (b)” contract—where the worker agreed to perform work personally for the employer in circumstances where the worker was not in business on their own account with the respondent as a client.
60. Traditional tests, such as those in Ready Mixed Concrete v Minister of Pensions, remain applicable. The Tribunal will consider whether there is the necessary degree of control and mutuality of obligation for the contract to be classified as a contract of employment.
61. However, the Ready Mixed Concrete test is not the appropriate starting point when there is a dispute about whether a contract existed at all.
62. Section 230 Employment Rights Act 1996 (“ERA”) includes:

"230 Employees, workers etc.

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" ... means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

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

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

Constructive Dismissal

63. Under Part X of the Employment Rights Act 1996, the right not to be unfairly dismissed applies only to employees, not to limb b workers, and it requires two years' continuous employment.
64. Section 95(1)(c) ERA refers to something colloquially known as “constructive dismissal”. In order to prove constructive dismissal the employee must prove
 - 64.1 that the employer has committed a serious breach of contract and

- 64.2 that the employee resigned because of that breach (or at least partly because of that breach; it does not necessarily have to be the only reason) and
- 64.3 that the employee must also prove they has not waived the breach by affirming the contract.
65. In London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493, the court, at paragraph 14, stated that:

The following basic propositions of law can be derived from the authorities:

1 The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] 1 QB 761

2 It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H–35D (Lord Nicholls) and 45C–46E (Lord Steyn). I shall refer to this as “the implied term of trust and confidence”.

3 Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666, 672A. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship (emphasis added).

4 The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must “impinge on the relationship in the sense that, looked at objectively , it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer” (emphasis added).

5 A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at paragraph [480] of Harvey on Industrial Relations and Employment Law:

“[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the ‘last straw’ which causes the employee to terminate a deteriorating relationship.”

66. The implied term that the employer “*shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and*

employee” is one which the employee can allege was breached by a single incident or by the cumulative effect of different treatment.

67. “Last straw” arguments do not do away with the need for the employee to establish that there has been a fundamental breach of contract, but are significant when considering – based on the specific incident which caused the employee to resign – whether the employee resigned because of the fundamental breach.
68. The last straw might be relatively insignificant, but it must not be utterly trivial. An entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful.
69. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, the Court of Appeal clarified the analysis in Omilaju and added to it. It reiterated that the last straw doctrine is only relevant to cases where the repudiation relied on by the employee takes the form of a cumulative breach and that the last straw doctrine does not have any application to a case where the alleged repudiation consists of a one-off serious breach of contract.
70. In Kaur, the Court of Appeal made clear that - in a last straw case - the fact that the employee might have affirmed a contract after some of the earlier conduct does not mean that it is not possible for the Claimant to rely on that earlier conduct as part of a cumulative breach argument. In paragraph 55 of its decision it summarised the correct approach.
 - 1 What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
 - 2 Has he or she affirmed the contract since that act?
 - 3 If not, was that act (or omission) by itself a repudiatory breach of contract?
 - 4 If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation ...)
 - 5 Did the employee resign in response (or partly in response) to that breach?
71. Where the answer at point (4) is “no” (for example the act that triggered the resignation was entirely innocuous), it is necessary to go back and see whether there was any earlier breach of contract that has not been affirmed, and which was a cause of the resignation. See Williams v Governing Body of Alderman Davies Church in Wales Primary School EAT 0108/19.
72. In considering whether a contract has been affirmed after a breach, it is necessary to have regard to the entirety of the circumstances. A gap in time between the act relied on and the resignation is a significant factor but it is by no means the only factor; in other words, a delay is not necessarily fatal to the employee’s argument for constructive dismissal. The reasons for the delay would

be relevant as would consideration of what had happened in the intervening period, such as was the employee working and receiving pay amongst other things.

73. Where an employee succeeds in the argument that there was a constructive dismissal, then the dismissal “reason” is the employer’s reason for the conduct which caused the employee to treat themselves as dismissed.
74. It is open to an employer to argue that the dismissal was for a potentially fair reason and was, in all the circumstances, a fair dismissal.
75. Section 98 of the Employment Rights Act 1996 (“ERA”) deals with fairness.

Entitlement to Notice

76. Statutorily, employees are entitled to a minimum notice period from the employer, up to a maximum of 12 weeks, calculated at one week per completed year of service.

Holiday Pay and Working Time Regulations

77. The Working Time Regulations 1998 (“WTR”) confer minimum rights to paid annual leave of 5.6 weeks per year, up to a maximum of 28 days of leave per year.
78. Typically, leave must be taken during the relevant leave year, and unused leave does not carry over.
79. The time limit for bringing a claim for unpaid leave is generally three months from the date the leave was taken without payment, or three months from the end of the leave year if leave was denied.
80. Where leave was taken but unpaid, the claim for payment may be presented (in addition and in the alternative to reliance on WTR) as a complaint of unauthorised deduction of wages, with time limits running from the end of the series of deductions.
81. In Smith v Pimlico Plumbers Ltd, the Court of Appeal analysed earlier decisions, including King v Sash Windows Workshop Ltd. Where the employer’s approach prevented the worker from exercising the right to paid leave throughout employment, the entitlement accrues until termination and crystallises on termination.

ACAS Code and Uplift

82. Under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, where an ACAS Code applies, an unreasonable failure to follow it may lead

to an uplift in compensation if the respondent fails to comply, or a reduction if the claimant fails to comply.

83. Not every failure is unreasonable; in the employer's case, size and resources are relevant, and in the claimant's case, all circumstances are considered. The ACAS Code applies to disciplinary and grievance procedures, including dismissals for disciplinary reasons.

Analysis and conclusions – Liability

Identity of the party which contracted with the Claimant

84. Neither the claimant nor the first respondent, Lee-Anne Plumb, gave specific and detailed evidence of the exact words used when they first met following an introduction by the claimant's sister. I do not find that surprising or suspicious given that it was around 6 years ago.
85. I do accept that the Claimant did not have the same understanding of the distinction between a company and an individual that an accountant, HR specialist, or employment lawyer would have.
86. However, I accept that she knew that there was a business called Physique Gym and that the offer was for her to work for that business.
87. It is certainly reprehensible that nothing was put in writing by either the company or Ms Plumb or Mr Alexander to explain the situation in detail. Nonetheless, the claimant understood that she was issuing invoices to Physique Gym and that those invoices were paid from a bank account in the name of the company.
88. The Claimant knew that official communications from time to time used company letterhead. Those included the communications in early 2024 which were written by Ms Plumb but which clearly referred to the Claimant's obligations to the company. The Claimant was not surprised or confused by those references, and did not regard it as Ms Plumb seeking to change the position.
89. The claimant's correspondence with the insolvency practitioner took place around March 2025 and later. I do not ignore that the information she wrote then includes matters she did not know in January 2020 and perhaps not even much later.
90. However, when the Claimant drafted the grounds of complaint with assistance from the Citizens Advice Bureau and a barrister, she accurately named the company.
91. Furthermore, in correspondence during 2024, the claimant was expressly told about the dispute between the company's directors. At no point did she respond

by saying this made no difference because her employer was Ms Plumb personally.

92. On the contrary, the Claimant liaised with Mr Alexander and ACAS and believed she could disregard instructions from Ms Plumb because Mr Alexander disagreed or told her not to follow them. This is inconsistent with the professed belief that she was employed by Ms Plumb as an individual. This was four years after she started working there, but I am satisfied that she did not initially believe she was employed by Ms Plumb and later come to change her view. Rather, I am satisfied that the Claimant was aware throughout that the agreement she had reached was such that her unwritten contract was with the company.

Employment Status

93. As to whether the claimant was operating a business independently with the company as her client, I regard that as straightforward: she was not. Nobody on behalf of the company or Ms Plumb has argued otherwise.
94. While the Claimant's tax records show she declared income as self-employed, that is not conclusive.
- 94.1 She worked only for the company.
- 94.2 She was under its control (as proven, among other things, by the correspondence in early 2024 which purported to say she was bound to comply with reasonable management instructions).
- 94.3 She worked shifts that were allocated by the company. That is, she did not have a free hand as to when she did the work required by the contract. She could turn down a shift, but could not decide upon her own pattern of work.
- 94.4 She could not earn additional profits by how quickly she performed the work, or choose her own method of performing the work.
- 94.5 She wore the company's uniform.
- 94.6 She was effectively working full-time.
95. I am satisfied that the necessary degree of control and mutuality of obligation existed such that she had a contract of employment with Alexander Plumb Ltd, as defined in section 230(1) of the Employment Rights Act 1996. She was not merely a "limb b worker" under section 230(3)(b).

Holiday

96. Regarding holiday entitlement, the claimant was entitled to 5.6 weeks per year. Exact calculations will be performed at the remedy stage, taking account of her

working time and pay. My finding is that she had no paid time off during her employment.

97. In principle, her entitlement is 5.6 weeks per year multiplied by the number of years employed, multiplied by her average weekly salary.

Termination of employment. Was there a dismissal?

98. The company, R2, did not expressly dismiss the claimant.
99. There was no written disciplinary procedure. It is an implied term of employment contracts that employers may investigate alleged misconduct. Given employees' right not to be unfairly dismissed, a dismissal without investigation is likely to be unfair.
100. Employers also have an implied right to terminate on reasonable notice (not less than statutory minimum) or summarily for gross misconduct. Employees have implied duties of good faith, including a duty to provide reasonable cooperation in investigations into the affairs of the company.
101. If an employer, without reasonable cause, accuses an employee of misconduct, that may breach the Malik term and justify resignation as constructive dismissal. In this case, while Ms Plumb informed the claimant she was suspended, the claimant did not regard herself as suspended and continued working. She was told to attend a disciplinary meeting on 3 June but did not attend.
102. It would have been open to the company to argue that statements on 1 or 2 July 2024 simply reiterated the Claimant's suspension (ie that there was a proper basis for telling the Claimant that she should not be on the premises or purporting to work a shift), but the company has not made that argument.
103. Even if calling the Claimant to an investigation meeting on 20 May, suspending her, or calling her to a disciplinary meeting amounted to a repudiatory breach, the claimant did not accept that breach by resigning; she affirmed the contract by continuing to work. As she expressly said at the time, she had discussed matters with Mr Alexander and ACAS and she chose to attend work.
104. On 1 or 2 July 2024, Ms Plumb made clear that the claimant was required to leave the premises. The claimant did not regard Ms Plumb as having uttered express words dismissing the Claimant.
- 104.1 There was arguably a repudiatory breach. The conduct which was potentially arguable as amounting to a breach of the term that the employer must not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence is: (i) R1's actions in the manner in which she told the Claimant

to go home and/or made oral accusation and (ii) the combined effects of R1 and Mr Alexander giving contradictory instructions to the Claimant, such that it was impossible for her to comply with both sets of instructions.

- 104.2 However, I do not regard the employer's actions (performed by R1) prior to 1 July, in terms of inviting the Claimant to disciplinary hearing, or purporting to suspend/investigate, as being without reasonable cause.
- 104.3 Further, I do not regard it as a breach of trust and confidence that the employer or Ms Plumb did not confirm to the Claimant what Mr Alexander's role would be in any disciplinary decisions. For one thing, although this was not discussed, and Ms Plumb was probably not contemplating it, in a small company, if all the directors are involved in initial disciplinary action, then that would lead to problems finding someone to hear an appeal. There is, therefore, no breach of an employment contract if not all the directors make the initial decision.
- 104.4 I also do not regard it as a breach of contract – or contributing to a breach of trust and confidence - that her employer, the company, had not taken external HR advice.
105. However, following the events of 1 or 2 July, the Claimant did not communicate resignation to the Respondent.
106. In Mr Clutch Auto Centres v Blakemore UKEAT/0509/13, the EAT considered the position in relation to an employee who had been found not to have been actually dismissed by the employer, and not to have communicated words of resignation to the employer prior to lodging a claim which alleged (amongst other things) constructive dismissal. On the facts, the employee in that case was found to have brought about the termination of the employment contract by the act of presenting a claim to the Employment Tribunal which made clear that he regarded the contract as terminated.
107. One difference between this case and Mr Clutch is that there the employer filed an ET3 which expressly acknowledged that employment was over, and that has not happened here (the company's ET3 being silent on the point). That being said, I make similar findings of fact here, and apply the same logic as used in Mr Clutch. The Claimant's contract of employment effectively ended when she presented her claim on 1 November 2024. Nothing prior to that ended the contract. There was no express dismissal and no resignation. It is not realistic to regard the contract as surviving after 1 November 2024.
108. The company did not contact the claimant after 1 July to offer shifts, rearrange the disciplinary hearing, end the suspension, or give an outcome. It did not make any payments to her. I find that the claimant has shown that the circumstances amounted to dismissal within section 95(1)(c) of the Employment Rights Act.

Fairness

109. My decision is that the dismissal was unfair. The Respondent has not purported to offer a potentially fair reason for ignoring the Claimant after 1 or 2 July, and, nor am I persuaded that its actions were procedurally fair.
110. The claimant is therefore entitled to a declaration that she was unfairly dismissed. Assessment of any basic award, reductions, and compensatory award will be dealt with at the remedy stage.

Notice Pay

111. The dismissal was without notice. R2 has failed to prove that the Claimant was guilty of any conduct which would cause her to lose her entitlement to notice.
112. There will be an assessment of damages for breach of contract.

ACAS Uplift

113. At the remedy stage, there will be no uplift for alleged unreasonable failure to follow ACAS code. While I sympathise with the Claimant as being caught in the middle between 2 directors, the fact remains that she was offered a disciplinary hearing and the right to be accompanied and did not attend. There was no breach of the Code's requirements in relation to disciplinary action.
114. The Claimant did not bring a grievance during employment.

Analysis and conclusions – Remedy

115. After the decisions on liability were given, I heard further submissions about remedy, including discussing the documents that each side believed they had which were relevant.
116. I had the Claimant's tax information for some relevant years. In 2023/24, according to the HMRC return, the profit from self-employment £12,013.00. So this was the best evidence I had of the Claimant's average weekly earnings. (It was not affected by the fact that the Respondent had purported to suspend the Claimant, and not pay her, in some of the following tax year).
117. I canvassed with the Claimant whether we should postpone to allow her to provide better proof of income with R2 and of any other documents relevant to remedy.
118. By this stage, all claims against R1 were dismissed. R1 was not the representative of R2, and thus she had no specific input into the timing of the remedy decisions. She remained present throughout the remedy stage, having indicated an intention to apply for costs.

119. Following a break for the Claimant to consider her position, she confirmed that she would rather proceed with remedy based on the available documents.
120. My decision was, based on that evidence, that her average weekly earnings were £12,013.00 / 52, namely £231.20.
121. For holiday pay, the Claimant had been employed from 19 January 2020 to 1 November 2024, which was 1749 days. She was not permitted to take any paid holiday during that time (because the Respondent insisted that all time off was unpaid). Thus the amount of holiday entitlement, in weeks, was $1749/365 \times 5.6$, which was approximately 26.83 weeks. Multiplying that by one week's pay (£231.20), the entitlement to compensation in accordance with WTR was £6203.10.
122. Her basic award for unfair dismissal was $4 \times £231.20$, so £924.80.
123. On 24 December 2024, the gym closed. Therefore, had the Claimant not been constructively and unfairly dismissed on 1 November 2024, she would have been dismissed by reason of redundancy by no later than 24 December 2024. She would have been entitled to one of – but not both – a basic award for unfair dismissal or a statutory redundancy payment for such a hypothetical termination of employment.
124. The Claimant obtained new employment. In November and December 2024, she earned £1641.51 and £1688.87 respectively.
125. Thus she earned more than she would have done had she been employed by the Respondent for those months until the closure of the gym.
126. My assessment of the compensatory award for unfair dismissal is nil.
127. Similarly, the damages for breach of contract (the lack of notice prior to dismissal) are assessed as zero because the Claimant earned more from her new employment than she would have earned had she still been employed by the Respondent during a hypothetical notice period.
128. The Claimant's employer breached the obligations to provide her with the written information required by section 1 the Employment Rights Act 1996 ("ERA"). I decided that the Claimant was entitled to an award under Section 38 of the Employment Act 2002.
129. In all the circumstances, including the complete failure to provide any information, or to try to rectify the situation at any time, my decision was that the Claimant is entitled to the "higher amount" which is 4 weeks pay. She was therefore awarded a further £924.80.

Analysis and conclusions – preparation time order

130. After the remedy decision, R1 applied for a preparation time order. Having heard from both parties present, I refused to make such an application.
131. In the Employment Tribunals Rules of Procedure, the section “Costs Orders, Preparation Time Orders And Wasted Costs Orders” is Rules 72 to 82.
132. When an application for costs / preparation time order is made, or when the Tribunal is considering the matter of its own initiative, there are potentially the following stages to the decision.
- 132.1 Has one (or more) of the criteria (for costs to potentially be awarded) as set out in the rules been met.
- 132.1.1 If not, there can be no order for costs / preparation time order.
- 132.1.2 If so, which rule or rules contain the criteria which have been satisfied (and why)?
- 132.2 Is the rule one which requires the Tribunal to consider making an award, or is it one which says the Tribunal “may” consider making an award.
- 132.3 Either way, if the criteria for an order are met, that means that the Tribunal has discretion to make an award, not that it is obliged to. So what are the relevant factors in this case, and, taking into account all of the relevant factors (and ignoring anything which is irrelevant), should an award be made.
- 132.4 If an award is to be made, what is the amount of the award? (And what is the time for payment, etc).

133. Rule 82 states:

82. Ability to pay

In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

134. As per the rule, “ability to pay” is something that “may” be taken into account at each of the last two stages of the decision-making. That is: should an award be made at all; if so, what is the size of the award (and the timetable for payment). A tribunal is not obliged to take “ability to pay” into account, but should specify whether it has done so or not (and, if not, why not). Generally speaking, where a party wants the Tribunal to decide that they do not have the ability to pay, then the onus is on them to (i) raise the point and (ii) provide evidence to back up the argument. That being said, in accordance with the Tribunal's duty of fairness, and in accordance with Rule 2, it may be appropriate for the Tribunal to seek to

ensure that a party (especially a litigant in person) understands that the onus is on them (at least, in cases where the order might be a large one): Oni v NHS Leicester City UKEAT/0133/14.

135. Rule 74, insofar as is relevant, states:

74.— When a costs order or a preparation time order may or must be made

(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(2) The Tribunal must consider making a costs order or a preparation time order where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success, or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

136. So one set of criteria for a costs order to be made are those set out in Rule 74(3). The tribunal is not obliged to consider making an award in such circumstances, but it may make an order. These criteria cover breaches of orders or practice direction, and they also cover postponement/adjournment where the application was made more than 7 days before the hearing was due to start.

137. If the criteria set out in Rule 74(2) are met, the Tribunal must actively consider whether or not to make an award (though it is not obliged to decide to make the award). The three subparagraphs are each independent. It is sufficient that any one of (a), or (b) or (c) is met.

138. As was noted in Radia v Jefferies International Ltd [2020] UKEAT 7_18_2102:

63. ... earlier authorities, about the meaning of “misconceived” in Rule 40(3) in the 2004 Rules of Procedure, are equally applicable to this replacement threshold test in the 2013 Rules. See in particular Vaughan v London Borough of Lewisham [2013] IRLR 713 at paragraphs 8 and 14(6). However, in such a case, what the party actually thought or knew, or could reasonably be expected to have appreciated, about the prospects of success, may, and usually will, be highly relevant at the second stage, of exercise of the discretion.

64. This means that, in practice, where costs are sought both through the Rule 76(1)(a) and the Rule 76(1)(b) route, and the conduct said to be unreasonable under (a) is the bringing, or continuation, of claims which had no reasonable prospect of success, the key issues for overall consideration by the Tribunal will, in either case, likely be the same (though there may be other considerations, of course, in particular at the second stage). Did the

complaints, in fact, have no reasonable prospect of success? If so, did the complainant in fact know or appreciate that? If not, ought they, reasonably, to have known or appreciated that?

139. So there can be an overlap in the arguments about whether the party acted reasonably in bring the claim (or conducting the pursuit of the claim or response) and about whether the claim or response had no reasonable prospects of success. Both sets of arguments can (and should) be considered. See Opalkova v Acquire Care Ltd EA-2020-000345-RN at paragraphs 24 and 25.
140. As Radia makes clear (paragraphs 65 to 69), a tribunal deciding that the claim/response had no reasonable prospect of success for costs purposes is not conducting the same analysis as for a strike out application. The Tribunal is not necessarily obliged to take the paying party's case at its highest, but rather can assess what the paying party knew (or ought reasonably to have known), and when, about the strengths/weaknesses of its case. In terms of what they knew (or should have known), a party is "likely to be assessed more rigorously if legally represented": Opalkova para 26.
141. As Opalkova also make clear, when there are multiple claims/complaints, the issue of bringing, or continuing, with a claim or response which had no reasonable prospect of success must be analysed separately for each complaint.
 - 141.1 The fact that one or more of the complaints succeeded would not – in itself - prevent a respondent from persuading the Tribunal that there were other complaints that had no reasonable prospect of success.
 - 141.2 Correspondingly, the fact that one or more of the complaints failed – that is that the response to that part of the claim succeeded - would not, in itself, prevent a claimant from persuading the Tribunal that part(s) of the response which dealt with the complaint(s) which did succeed had no reasonable prospect of success
142. Where the argument is that the party has acted "vexatiously, abusively, disruptively or otherwise unreasonably" then the only conduct that is taken into account is that which is (either the bringing of the proceedings or) the way that the litigation has been conducted. This ground can potentially be established even where the paying party has been successful in the litigation. The precise details of the conduct in question will be relevant both the (a) whether the criteria in Rule 76(1)(a) are met and/or (b) whether, in all the circumstances, the Tribunal should exercise its discretion to make a costs order.
143. If the criteria to potentially make an order are met, then the factors which are potentially relevant to the decision about whether to make such an order (and, if so, how much the award should be) include, but are not limited to, the following.

However, the Tribunal's primary duty is to follow the wording of the rules, and to make specific decisions on the merits of the case in front of it.

- 143.1 Costs are the exception rather than the rule. A party seeking costs will fail if they do not demonstrate that the criteria for *potentially* making such an order (in the Tribunal rules) have been met. However, the mere fact alone that the criteria have been met does not establish that the general rule is to make a costs order in such circumstances.
- 143.2 Costs, if awarded, must be compensatory, not punitive. If the argument that there has been unreasonable conduct is made then the whole picture of what happened in the case is potentially relevant. However, it is necessary to identify the specific conduct, and decide what, specifically, was unreasonable about it and analyse what effects it had. Some causal link between the conduct and the costs sought by the other party is required. Yerrakalva v Barnsley [2011] EWCA Civ 1255.
- 143.3 Was the party warned that an application for costs might be made, and, if so, when, and in what terms.
 - 143.3.1 The lack of such advance warning does not prevent an application being made (or the Tribunal granting it). The rules give a party up to 28 days after the date on which the judgment finally determining the proceedings was sent to the parties. Furthermore, while the rules give the other party the right to a reasonable opportunity to make representations in response to the application, it does not impose a requirement that they were warned before the application was made.
 - 143.3.2 However, the issue of whether a party (especially a litigant in person) was aware of the possibility of having to pay costs is likely to be relevant. This can be demonstrated by something other than a costs warning from the opposing party: for example, comments made at a preliminary hearing; the fact that they had been involved in an earlier case in which there was a costs application; the fact that they themselves had expressed an intention to seek costs from the other side.
 - 143.3.3 If a warning has been made, its precise terms will be relevant. A simple boiler plate threat to apply for costs, which appears to be a knee jerk response that the party (or its representative) always sends out is likely to be far less persuasive than a considered attempt to address the arguments raised by the other party, and explain why they have no prospect of success, or to explain why the particular conduct has been unreasonable, and what the rules or case management orders (specifically) require instead.

- 143.3.4 The timing of the warning will be relevant, as will the issue of whether the warning was updated and repeated at relevant stages.
- 143.3.5 The fact that a costs warning was made, even one which is clear and detailed and well-timed, and which identifies the precise basis on which the application was later made, does not guarantee that an order will be made.
- 143.4 What advice did the party have? Who from? When? It can be a double-edged sword that a party has taken legal advice. On the one hand, they might seek to argue that since a lawyer advised them that the claim had merit, it was not unreasonable to pursue it. On the other hand, the opposing party might seek to argue that (even if the paying party was a litigant in person at the Final Hearing) the fact that they had legal advice available shows that they ought to have understood the claim was hopeless, and/or that their conduct was inappropriate, and/or that a settlement offer that had been made was a good one. To rely on the former argument, the paying party might have to waive privilege over the advice in question. However, there is no obligation to do so to defend itself against the latter inference; where privilege is not waived, the Tribunal will not make assumptions that the party specifically received advice that they were acting unreasonably, but the fact that advice was available to them is likely to undermine an argument that, as a litigant in person, they could not reasonably have been expected to anticipate the arguments being raised by the costs application.
144. In this case, R1's defence has always been made clear throughout. Namely, she has always made clear that she denied being the employer, and denied having any contract with the Claimant.
145. It has been made clear that R1 would be seeking costs / preparation time order if her defence succeeded. For example, on 16 May 2025, as well as applying for strike out, R1 applied for costs, and the basis was that the Claimant was alleged to have acted unreasonably by bringing the claim against R1.
146. R1's arguments were firstly that the Claimant had always known that the company, not R1, was her employer. Secondly, while it overlaps with the first argument to some extent, R1 also alleged that the Claimant only began to profess to believe that R1 was her employer after (i) the Claimant had presented a claim which alleged R1 was liable to the Claimant and (ii) after it was pointed out, after presentation of the claim, that the complaints presented could only succeed against the employer.
147. R1 points to the comments made by the Claimant to the insolvency practitioner which R1 says prove either that the Claimant knew that R2 was her employer, or

else show that the Claimant was willing to make a dishonest attempt to receive payments arising from the company's insolvency.

148. My decision about the identity of the Claimant's employer went in R1's favour, and went against the Claimant.
149. The context was, however, that nobody had provided the Claimant with a written contract of employment, or a statement of particulars as required by Part I of ERA. She was required to submit invoices even though she was not self-employed.
150. The Claimant had legal advice when she submitted the claim. In the circumstances, it was not unreasonable for those advising the Claimant to believe that it was sensible to include Ms Plumb and Mr Alexander as respondents, in case there was any issue about the identity of her employer. (I acknowledge that the Claimant chose not to present a claim against Mr Alexander, and so she was not simply following advice blindly when she did choose to name Ms Plumb.)
151. Ms Plumb was a director of R2. She corresponded with the workers about holiday rights and contracts (see the WhatsApp messages discussed in findings of fact). She had enough knowledge of employment law to assert that the Claimant was required to follow reasonable instructions (see comments about the instructions given in early 2024), and she offered a purported refutation of the advice the Claimant received from ACAS about suspension.
152. The Claimant was not at all responsible for the lack of a written employment contract, or written particulars. The employer was entirely responsible for that, and Ms Plumb ultimately – albeit in conjunction with her fellow director, Mr Alexander – was to blame for what the company did and failed to do in relation to providing clarity to the Claimant, and fulfilling its statutory obligations.
153. One of the purposes of section 1 ERA is to provide clarity to employees as to the name and address of their employer should they need to bring a claim against their employer. The directors of R2 failed to comply with that requirement.
154. Even when the Respondent wrote to the Claimant on the headed paper mentioned in findings of fact, that headed paper omitted the company number (on the copies that I have seen, at least).
155. When the Claimant presented invoices, she was not told that she had incorrectly named the person that was supposed to pay them. Ie that she did not have the exact legal name of the corporate body.
156. The identity of the Claimant's employer was not formally conceded by R2 in its ET3 response. A decision by the Tribunal about the employer's identity was going to be required whether R1 was named or not.

157. I do accept that if R1 had not been named, she could simply have left it to R2's insolvency practitioners to deal with the matter and she has been put to effort that would not have been required had she not been named.
158. However, in all the circumstances, I do not consider it to have been unreasonable conduct of the litigation to have named R1 as a possible employer (in the alternative to R2) and I do not think that there was no reasonable prospect of demonstrating that the oral contract was formed between Ms Plumb as an individual and the Claimant.
159. Even had it been my decision that the criteria to potentially make a preparation time order were met, I would not have exercised my discretion to make an award, given Ms Plumb's role in the lack of clear information given to the Claimant during her employment.

Approved by:
Employment Judge Quill
on Date: 2 March 2026

REASONS SENT TO THE PARTIES ON

26 March 2026

FOR EMPLOYMENT TRIBUNALS