



# EMPLOYMENT TRIBUNALS

Claimant: **Miss T Johns**  
Respondent 1: **BDW Trading Limited**  
Respondent 2: **Dave Barford**

Heard at: **Birmingham Employment Tribunal**

On: **2 March 2026**

Before: **Employment Judge Wright**

Appearances: Miss Warren (Counsel for the Claimant)  
Miss Abas (Counsel for the Respondent)

Witness evidence: H Pearson

## Reserved Judgment

1. This is the Tribunal's reserved judgment following the Preliminary Hearing ("PH") held on 2 March 2026 to determine:
  - (i) whether the Second Respondent ("R2") was an employee or worker of the First Respondent ("R1") within the meaning of s.83 Equality Act 2010 ("EqA"); and
  - (ii) if not, whether R2 was acting as an agent of R1

The PH also concerned discrete case-management matters which have been addressed separately in a case management order already sent to the parties.

2. The Tribunal received oral evidence from Mr Pearson, Commercial Manager of R1. Neither the Claimant nor R2 gave evidence. The Tribunal also received written submissions from R1 and R2 received by the Judge on 16 March 2026.

3. R1 maintained throughout that R2 was a self-employed contractor and the issue of whether R2 was an employee or worker of R1 was not contested by the Claimant. The Tribunal nevertheless determines this issue formally below.
4. The central question in dispute was whether R1 delegated the supervision of the Claimant to R2 and, if so, whether R2 was thereby acting as an agent of R1 for the purposes of s.109(2) EqA.

## **The Evidence**

5. The Tribunal relies principally on:
  - (a) the oral evidence of Mr Pearson; and
  - (b) the documents identified within the bundle as referenced during the PH
6. It was clear from the oral evidence and the Tribunal found that:
7. The Claimant was employed by R1 under an apprenticeship contract. Clause 5 of that contract imposed an express and mandatory obligation on R1 to ensure that the Claimant received on-the-job training during normal working hours, for the purpose of enabling her to perform her duties. That obligation rested with R1 and was not transferred by contract to any third party.
8. The evidence establishes that R1 fulfilled that obligation, in practice, by placing the Claimant on site with R2, a contractor. The Tribunal is satisfied that this was not an informal or incidental arrangement, but one contemplated within R1's established working model. Contemporary documentation records that R1's employed apprentices were placed with contractors on site, with the expectation that they would work alongside and be supervised by those contractors as part of their training.
9. Although the Claimant remained contractually accountable to R1's Bricklaying Manager, the Tribunal finds as fact that, on site, R2 exercised sole day-to-day supervisory responsibility for the Claimant. No other individual provided routine instruction, oversight, or direction in relation to her work. The supervision was continuous and integral to the performance of the Claimant's role as an apprentice.
10. Mr Pearson accepted that R1 expected R2 to supervise the Claimant, and the Tribunal finds as fact that R1 delegated operational and supervisory responsibility to R2. The Claimant thereby relied on R2 for instruction, guidance, and allocation of tasks in the course of her daily work.

### **Was R2 an Employee or Worker of R1?**

11. The Tribunal accepts the uncontested position that R2 was a self-employed contractor engaged by R1. There was no mutuality of obligation and no contract of employment, apprenticeship, or personal service between R1 and R2.
12. Applying the extended concept of “employment” in s.83(2)(a) EqA, the Tribunal finds that R2 was not subject to an obligation of personal service and operated as an independent contractor who could delegate work, including supervision, within his own team. This is inconsistent with employee or worker status.
13. The Tribunal therefore concludes, as a matter of law and fact, that R2 was not an employee or worker of R1.

### **Was R2 Acting as an Agent of R1?**

#### **The statutory framework**

14. Section 109(2) EqA provides that anything done by an agent for the principal, with the authority of the principal, must be treated as also done by the principal.

#### **R1’s submissions**

15. R1 argued that R2 was not its agent, contending that he merely performed services that benefited R1 and lacked authority to act “on behalf” of R1 in any relevant sense.
16. R1 further submitted that supervision of the Claimant, if performed at all, was incidental to R2’s own work and did not amount to the type of authorised representative function contemplated by the law of agency. It relied on *Ministry of Defence v Keme* [2014] ICR 625 and, in particular, paras [47]–[48].

#### **Findings of fact**

17. The Tribunal rejects R1’s characterisation of the evidence. It is not correct, as asserted at paragraph 44 of R1’s written submissions, that R2 played only “some” role in supervision. The Tribunal finds as fact that R2 played, in practice, the only role in supervising the Claimant. Mr Pearson was quite clear that those involved in the supervision of the Claimant on paper, would not have been involved or had any interaction at all with her on site and whilst there would have been occasional on site visits to review the overall project, the Claimant would not have seen or had any interaction or involvement with those individuals.

18. This supervision was not sporadic, incidental, or peripheral. It was integral to the Claimant's on-site training, which her contract expressly required R1 to provide. R1 complied with this obligation by delegating day-to-day supervisory authority to R2, a conclusion reinforced by Mr Pearson's answers to the Tribunal's own questions.
19. The Tribunal further finds that R1 knew and intended that:
- (a) R2 would exercise supervisory control over the Claimant's daily work;
  - (b) R2 would instruct the Claimant, direct task allocation, and monitor her training progress; and
  - (c) R2's supervisory role formed part of the mechanism through which R1 discharged its obligation to provide on-site apprenticeship training.
20. The question is whether R2, in supervising the Claimant, was acting "on behalf of" R1 pursuant to authority vested in him by R1.
21. The Tribunal finds that R1 deliberately and knowingly delegated the practical discharge of its supervisory function, in respect of the Claimant's on-site training, to R2. That delegation was implicit in the placement arrangement and in the expectation that the Claimant would be instructed and overseen by R2 in the course of her daily work.
22. In supervising the Claimant, R2 was not merely performing work that happened to benefit R1. He was carrying out a function which R1 itself was obliged to perform, and which it chose to effect through him. The supervision of the Claimant was therefore undertaken on behalf of R1 and pursuant to its authority, albeit informal and implied rather than express.
23. The Tribunal accordingly concludes that, for the purposes of section 109(2) Equality Act 2010, R2 was acting as the agent of R1 in relation to the supervision of the Claimant.
24. The Tribunal has considered the decision of the Court of Appeal in *Ministry of Defence v Kemeh* [2014] ICR 625, in particular paragraphs [47]–[48]. The Tribunal accepts the principle articulated therein that agency is not established merely because an individual performs work which benefits another, nor because the putative principal exercises some measure of operational control.
25. This case is materially distinguishable. In *Kemeh*, the alleged wrongdoer was employed by a contractor and performed his own functions pursuant to that employment. He was not authorised to discharge, on behalf of the Ministry of

Defence, a responsibility which the Ministry itself owed to the Claimant. By contrast, in the present case, R2 was entrusted with, and in fact carried out, the supervision of the Claimant's on-site training, a responsibility which remained that of R1 under the apprenticeship contract.

26. Accordingly, this is not a case of a contractor simply carrying out work for the benefit of a principal, but one in which a defined function of the principal was delegated and exercised by another on its behalf. The reasoning in *Kemeh* therefore does not preclude a finding of agency on the facts of the present case.

27. Taking these factors together, the Tribunal concludes that, in supervising the Claimant, R2 was acting as R1's agent within the meaning of s.109(2) EqA.

## **Conclusion**

28. The Tribunal determines that:

- (1) R2 was not an employee or worker of R1 within the meaning of s.83 EqA; but
- (2) R2 was acting as an agent of R1 for the purposes of s.109(2) EqA when supervising the Claimant.

**Employment Judge Wright**

6 April 2026

## **Note**

**Public access to employment tribunal decisions**

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.