EMPLOYMENT TRIBUNALS

Claimant:	Mr David Huchinson		
Respondent:	ADT Workplace Limited		
Heard at:	Croydon (video/CVP)	**On:** 3 June 2026	
Before:	Employment Judge Wright Mr W Dixon Mr C Mardner		

Representation
Claimant: In person
Respondent: Mr J Searle - counsel

JUDGMENT having been given to the parties on 3 June 2026 and written reasons having been requested by the claimant on the 3 June 2026, in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. The claimant presented a claim on the 4 March 2025. He was given a month's notice of termination on the 5 March 2025 (page 369). The claimant says his employment terminated on the 3 March 2025.

2. The claimant claimed interim relief and so he did not engage in Acas early conciliation in respect of this claim. He presented a second claim (6029946/2025), however that claim was found to have been presented out of time.

3. A case management order recorded the matters to be considered at this three-day final merits hearing were: detriment for making a protected disclosure; wrongful dismissal; and a failure to provide a written statement of terms of employment. It is not clear how the wrongful dismissal and written particulars claims were recorded as being before the Tribunal; but it was not in any event necessary to consider that point.

4. After reviewing the pleadings, the case management order, the witness statements and the documents in the bundle, it became apparent there was a preliminary issue to determine.

5. That was the issue of illegality. A contract may be illegal because for example, a person is employed who is too young to work in an age restricted environment (a 16 year old working in a bar where the minimum age is 18). It could also be someone employed who does not have the right to work in the UK.

6. At common law, the illegality may mean the contract is void and unenforceable as it would be harmful to the integrity of public morality or to the integrity of the legal system.

7. **Holman et al v Johnson alias Newland (1775 1 Cowp 341)** said: ‘No Court will lend its aid to a man who founds his cause of action upon an immoral or illegal act’. A case from 1775 demonstrates how entrenched this doctrine is in the legal system and accordingly it applies to the Employment Tribunals in England and Wales; this jurisdiction.

8. The point was made that in particular text or WhatsApps messages are unguarded. Particularly when as in this case, the claimant knew Mr Sanderson a director of the respondent prior to this engagement. It was Mr Sanderson who had approached the claimant to work for the respondent.

9. There are two General Service Agreements in the bundle. For the first, the date given in the index was 10 January 2023, whereas the Agreement itself says it was dated 1 February 2023 (page 218). That Agreement provided for (at clause 26) a 2.5 day working week at a monthly rate of £5.417.

10. For the second agreement the date in the index was the 20 February 2023. The Agreement is also dated 1 February 2023. It has the same monthly rate of pay, but it provides for a 5 day working week (clause 26).

11. There must be an error here as it is common ground between the parties that initially the claimant was offered a 5-day-per-week engagement and it was later reduced, by agreement to 2.5 days.

12. The issue was not how many days per week the claimant worked, but whether or not he achieved his target of arranging 5 meetings per week for the respondent. The respondent did not take any action or do anything about the claimant’s performance, until the termination letter dated 5 March 2025. For these purposes therefore, the performance or lack of is not an issue.

13. Against this background of what purported to be a Contract for Services, with the engagement starting on the 1 February 2023, the respondent at 14:35 on the 8 February 2023 ran a HMRC Check Employment Status for Tax check. The result was ‘Employed for tax purposes for this work’ (page 375).

14. Also on the 8 February 2023 at 15:07, the claimant messaged Mr Sanderson (page 516):

> 'Hello Craig. Give me a bell please, where you're free. Finance at ADT saying they will have to pay me PAYE.'

15. Mr Sanderson responded at 17:03:

> 'David's just re doing your letter so you don't get clobbered Paye. …'

16. On the 20 February 2023 the claimant emailed 'Finance' at the respondent to say (page 238):

> 'Please note my contract/SLA has been modified between myself, David Clemetson and Craig Sanderson to something which does not require me to go onto PAYE. From the date of submitting an invoice, how long does it usually take to process? If I wanted to receive payment the last working day of a month when should I submit an invoice.'

17. The claimant's claim is that he made a qualifying protected disclosures to the Pensions Regulator on the 28 February 2025 during a telephone discussion. He obtained a transcript of that conversation, in which he said (page 313):

> '…
> I've been working for a company for just over two years, and a big limited company, £40 million turnover, 100 employees, HR department and accounts department. That will become relevant a bit later, as in they fully know what they should and shouldn't do.
>
> And my work for them started where I was given a contract called a service agreement, where they described me as a contractor, themselves as the client. **And they changed it shortly after a few weeks after, because their payroll department said I should go into the PAYE system**.
>
> So they altered some clauses, should we say. But either way, the actual reality of my working conditions, I believe according to tax regulations and employment law and pension, indicate 100% of an employee at the very least a worker, worker status, not self-employed.
>
> It's also by the actual way I work. And it does appear, I'm looking at things retrospectively.
>
> I believe that instantly, if a company called you self-employed, you self-employed, your employee, your employee. But I only realised very, very recently, it's not the case.
>
> It depends on how you actually work and the way you're managed and certain other things. But I'm just trying to report that I've never

> been put onto their auto-enrolment pension system, never been paid a penny in pension.
>
> …'

[Emphasis added]

18. On the 3 March 2025 the claimant sent an email to Mr Sanderson at 12:32 which read (page 365):

> '…
>
> In clause 26 of my contract it states I am to provide 2.5 days of work per week and elsewhere noted in same contract monthly compensation is £5417 for that work. As I have worked 5 days a week from week one onwards to present, past 25 months. There's money still not paid to myself at 25 months (25x £5417) total is £135425.00p.
>
> Note I have applied 8% simple interest per year on the money owed for each year the balance which is outstanding. See attached the total, the invoice attached for the amount of £151,442.00p. Which is to be actioned immediately and paid within 14 days of receipt (today).
>
> Should ADT Workplace Limited wish me to continue working it is more appropriate for me to go onto your PAYE system. If I am to work 5 days a week as I have been the past 2 years the base salary should be £130k per year. Note should you not wish to accept these terms and terminate our working arrangement. I wish to remind you of the one the months notice to terminate as per clause 26. Should you prefer to terminate I'm happy to work the notice period.
>
> …'

19. It is noted that the claimant did not say in that email something along the lines of 'I should have been on PAYE all along'. Similarly, there was no suggestion from the claimant that he should have been auto enrolled in respect of pension nor any mention of the call to the Pensions Regulator.

20. The claimant also sent an invoice for what he claimed was outstanding monies owed for £151,442 which included interest.

21. At 12:51, Mr Sanderson sent a message to the claimant which said (page 515):

> 'What are you playing at Dave. You were fully aware of the deal (5 days per week, contract says 2.5 for your tax purpose alone) …

22. In a termination letter of the 5 March 2025 sent at 7:45am Mr Sanderson said (page 369):

> ‘…
> 4 The services to be provided by you were to be performed over a 5-day working week between the hours of 08.30 and 5.30 Monday to Friday as set out at clause 26 of the Agreement:
>
> “5 full days per week consultation, (Namely 08:30 - 17:30) per day, will be dedicated to ADT Workplace Ltd by the “contractor”.
>
> 5. In return for meeting the Service commitments described above within the durations and timescales prescribed, the Agreement includes for a payment to you in the amount of £5,417 per month.
>
> 6. On the 8th February 2023 you were advised that under the terms of your existing Agreement that you would be classified under current tax legislation as being a full-time employee and as such, you would be liable for PAYE income tax. On this basis you decided to change to the Agreement to reflect a 2.5 day working week to demonstrate to the tax authorities that you were not a full-time employee of this business to avoid any PAYE tax liability. Please refer to table ‘C’[1] annexed to this letter.
>
> 7. At your request, on the 20th February 2023 a new agreement was provided solely amending your working arrangements to suit your own personal tax circumstances.
>
> 8. This is acknowledged by your email of 20th February 2023 which states:
>
> “Dear Sonia, Please note my contract/SLA has been modified between myself, David Clemetson and Craig Sanderson to something which does not require me to go onto PAYE.”
>
> 9. Between February 2023 and February 2025, you proceeded to operate in a telemarketing capacity for ADT Workplace and under the terms of a modified agreement, only revised to suit your individual tax circumstances, and upon the same 5-day working week basis as was always envisaged under the Agreement.
>
> 10. In good faith we have paid all amounts invoiced by you between the periods of February 2023 and February 2025 without any mention by you during this period of any alleged unpaid overtime.
>
> …’

[1] Annex C was the HMRC tax check (page 375) referred to at paragraph 13 above.

23. It is observed that although this letter was not an instantaneous response to the claimant's email and that Mr Sanderson would have had time to reflect before sending it; it is a contemporaneous account from him of the arrangements made in February 2023 as requested by the claimant from his (Mr Sanderson's) point of view.

24. There does not appear to be any factual dispute of the claimant's position. That he asserted he did not want to be PAYE; until he was dismissed and presented this claim. In this claim he claimed to have an employee or a worker throughout his engagement.

25. These concerns and these documents were put to the parties and they were asked how long they needed to consider their respective positions. They both asked for 30 minutes, which was granted. The parties were informed that the Tribunal was considering of its own motion, striking out the claim under Rule 38(1)(a) on the basis that the affront to public policy if the claim were to continue, was scandalous.

26. The claimant submitted that there was no deliberate illegality on his part. He said that the tax situation was the responsibility of the respondent although he was not saying it had committed fraud. Obviously, he wanted the case to go ahead.

27. The respondent was in difficulties and it is not clear it appreciated that fact. Mr Searle submitted that there are some documents which pointed towards potential illegality in the common law sense and he could understand why the Tribunal was looking at this with a sceptical eye. He said the respondent did want to on-board the claimant as PAYE, but he did not want that, he wanted to be self-employed and that should go into the mix. He accepted on the facts it 'did not look good for the respondent'. The claimant was the driver in this, he said he could do the job in 2.5 days, not five and it was his decision to be a freelance contractor. The email he sent on the 20 February 2023 was consistent with that (page 238).

28. Mr Searle also referred to the authority of **Okedina v Chikale [2019] IRLR 905**.

29. In the case of **Patel v Mirza [2016] UKSC 42** the Supreme Court provided guidance on whether a claim could continue where there is evidence of illegality.

30. The court should take into account:

    the underlying purpose of the law that had been breached, and whether that purpose would be enhanced by the claim being refused;

    any other relevant public policy which might be affected by the denial of the claim;

and whether denial of the claim would be a proportionate response to the illegality (bearing in mind that punishment is a matter for the criminal courts).

31. In commenting on those considerations, the Supreme Court said in **Stoffel & Co v Grondona [2020] UKSC 42**:

> ‘since the overriding consideration is the damage that might be done to the integrity of the legal system by its adopting contradictory positions, it may not be necessary in every case to complete an exhaustive examination of all stages of the trio of considerations. If, on an examination of the relevant policy considerations, the clear conclusion emerges that the defence should not be allowed, there will be no need to go on to consider proportionality, because there is no risk of disproportionate harm to the claimant by refusing relief to which he or she would otherwise be entitled. If, on the other hand, a balancing of the policy considerations suggests a denial of the claim, it will be necessary to go on to consider proportionality’ [26].

32. The court should also consider whether there is a sufficient causal link between the illegal conduct and the claim being made to the tribunal.

33. The Court of Appeal considered the illegality defence in the context of an employment situation in the case of **Hall v Woolston Hall Leisure Limited [2001] 1WLR 225**. It was found that for an employer to succeed in a defence of illegality, the employee would have to have both knowledge of and participation in the illegality.

34. **Okedina v Chikale [2019] IRLR 905** considered the pre-**Patel** case of **Hall v Woolston Hall** was still good law, because nothing in **Patel** was inconsistent with **Hall** as regards cases where there has been illegal performance of a contract by a party who knowingly participated in that illegal performance. **Hall** was a case where the employee had (at best) acquiesced in her employer’s conduct in paying part of her wages in cash to avoid paying tax on them – she had not suggested the scheme, nor benefited from it. The Court considered her knowledge of the fact that she was paid partly in cash did not render that contract unenforceable.

35. There are cases which fall on either side of the line. Those such as **Hall**, where although there was wrong-doing (a fraud on HMRC) and the claimant was aware of it; it was imposed upon her or she had (at best) acquiesced to it. The Tribunal is fully aware of the inequality of bargaining power in the employment relationship and the difficulties there are for an employee when an employer wants to or insists on committing fraud/wrong-doing. That is particularly so when it does not appear to the employee that any action will be taken against the employer (by HMRC or another).

36. There is therefore a difference between an employee who ‘goes along’ with the wrongdoing, knowing it is wrong, but having performed work for

the employer wants to be paid. They can take their chances with the whistleblowing legislation, but if they are dismissed and notwithstanding any claim which they can bring; they have no income and will have to find another job. They will have a dismissal on their record. They lack options but to go along with the fraud. It is right that in those circumstances, the legal system should be sympathetic and potentially allow them to pursue their claim.

37. This claim falls on the other side of the divide. At the outset, the respondent wanted to do the right thing. The claimant was clear and emphatic that he did not want to go onto PAYE. For whatever reason (and whatever the consequences) the respondent acquiesced to the claimant's demand. The claimant was the instigator of the wrong-doing, not the respondent. The respondent will however have to take the consequences of its actions.

38. Per Lord Denning in **Massey v Crown Life Insurance Co [1978] 2 All ER 576**: '… if the parties deliberately arrange to be self-employed to obtain tax benefits, that is strong evidence that that is the real relationship'.

39. It is acknowledged that besides the claimant benefitting from this wrong-doing, the respondent also benefitted in that it avoided employer's national insurance contributions, pension contributions, holiday pay and other benefits (such as sickness pay or statutory absence pay (parental leave and the like)). It is also acknowledged that that respondent has also inadvertently benefited as a result of this Tribunal's decision, in not having to face the jeopardy of having to defend various statutory claims. The respondent and its advisors should reflect on their actions and the positions which they took.

40. The parties were advised at the outset that the matter may be reported to HMRC. In the alternative, it is understood that HMRC also monitors claims where a party is in default in respect of their obligations to it. It is for HMRC to take appropriate action (criminal or civil) not this Tribunal.

41. The finding is therefore that the claimant's contract was tainted by illegality. The instigator of all the wrong-doing was the claimant. He never wanted to be paid through the respondent's PAYE system and even on the 3 March 2025, the highest he put his position was that if the respondent wanted to continue the engagement, from that point in time it would be 'more appropriate' for him to go onto the respondent's PAYE system. Albeit at a rate of pay which was double that he was currently on. It is not surprising the respondent was not interested in this proposal.

42. In accordance with **Patel v Mirza**, the Tribunal finds that there is a clear public policy in ensuring that tax is accounted for properly to HMRC, and that parties should not enter into schemes to wrongfully avoid a tax liability that is due. That objective would be enhanced by striking out this claim.

43. The finding is that the illegality results in the contract being void from the outset.

44. The Tribunal considered whether any of the claims it was due to consider could proceed. The wrongful dismissal claim is rooted in the contract, which is void. It is not just to allow that claim to proceed.

45. The claimant never wanted to be an employee and to be processed through the PAYE system and so similarly, he cannot pursue a claim for a failure to provide a written statement of employment particulars. Such a claim which is also rooted in the contract itself, is void.

46. Turning to the whistleblowing detriment claim. The protection for those who are subject to a detriment as a result of blowing the whistle is for workers and employees. Until these proceedings, the claimant has never claimed to be a worker or an employee. He actively avoided employee status and he engineered self-employed status; it seems for financial reasons (the references to him not wanting to be PAYE which is clearly beneficial from a self assessment point of view). He did not claim to have been an employee throughout his engagement and did not do so in the email of the 3 March 2025.

47. The purpose of the legislation obliging the claimant to pay the correct deductions via PAYE are so to fund public services appropriately. Genuinely self-employed people pay different contributions as decided by Parliament. The genuinely self-employed take a higher risk in their enterprise. There was no risk to the claimant in this engagement. He was paid £5,417 (presumably gross) each month, without demur by the respondent upon production of his invoices. To allow the claimant to pursue his detriment claim would not discourage others from doing the same. Indeed it may *encourage* them to do so.

48. There is a significant public policy reason for not allowing the claimant to pursue this claim, which outweighs any residual concern. It is difficult to see how the claimant has been somehow exploited or subjected to a detriment when he has been the architect of the entire arrangements as far as HMRC goes. Any failure to auto-enrol the claimant by the respondent was entirely due to his choice to reject PAYE for a financially advantageous self-employed arrangements.

49. The Tribunal finds the claim is scandalous as per Rule 38(1)(a) in that it is a misuse of the judicial process to ask the Tribunal to assist and determine the claimant in upholding an arrangement that was void from the outset; entirely on the claimant's instigation.

50. The claim is therefore struck out and is dismissed.

Postcript

51. These written reasons contain findings adverse to the claimant (and to the respondent). At the conclusion of the oral reasons, in accordance with Rule 60(4), the claimant requested written reasons.

52. It was explained that it if he wished to request written reasons he was able to do so and he was entitled to receive them. It was also explained that if he wished to appeal this decision, he would require the written reasons and that there was no issue in providing them. The written reasons will go onto a publicly searchable and available website.

53. It was suggested to the claimant that he reflect upon his position for seven days and then revisit his request. It was also suggested that the claimant review the Judgments on the Employment Tribunal database, which is publicly accessible and consider his position. His response was that he wanted written reasons.

54. Two more attempts were made to give the claimant the opportunity to consider his position and to reflect whether or not he really did want to request written reasons at that particular point in time. He need not ask for them during the hearing and he could take time to deliberate. On both occasions, the claimant stated that he wanted written reasons. Therefore, after suggesting to the claimant on three occasions that he take his time, these written reasons were provided.

Approved by:
Employment Judge Wright
Date: 3 June 2026

Sent to the parties on:
Date: 25 June 2026