EMPLOYMENT TRIBUNALS

Heard at:	Croydon (by video)	**On:** 22 and 23 June 2026
Claimant:	Miss Ashley Ward	
Respondent:	Springbank Contractors Limited	
Before:	Employment Judge Eoin Fowell	
Representation:		
Claimant	Mark Afeeza of counsel	
Respondent	Mumin Rahman, Consultant, Croner Limited	

JUDGMENT

1. The claim was submitted in time, on the basis that it was not reasonably practicable to have submitted it within the normal time limit and it was submitted within a reasonable period after the expiry of that time limit.

2. The claimant was an employee at all material times.

3. The claimant was unfairly dismissed, on the basis that no fair reason for her dismissal has been shown.

4. The compensatory award is increased by 25% for breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures, to reflect the lack of any procedure.

5. An award of four weeks' pay is made to the claimant under section 38 Employment Act 2002 for the respondent's failure to provide her with a written statement of terms and conditions of employment.

6. The claimant is awarded compensation for unfair dismissal as follows:

   a) Basic award £1,400

b)	Loss of earnings	£31,080
c)	Loss of statutory rights	£500
d)	Uplift on compensatory award	£7,770
e)	Grossing up element for tax	£2,338
	Total	£43,088

7. The section 38 award adds £3,800

8. The total sum due to the claimant is therefore £46,888

9. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply.

REASONS

Introduction

1. These written reasons are provided at the request of the respondent following oral reasons given yesterday and today. As usual some editing has taken place for the sake of clarity, and here and there some points are expanded so these written reasons shall stand as the final version.

2. By way of background, Miss Ward worked for the company for a little over two years until, on 17 October, 2024, she was dismissed without notice. The company says that she was self-employed so she was not entitled to any notice. She says that she was fully integrated into the company and was in reality an employee. Employment status is therefore a major issue.

Time limits

3. There is also a time limit issue, which was the first item resolved. The starting position, by section 111 Employment Rights Act 1996, is that such claims have to be brought within three months of dismissal plus time spent in early conciliation through ACAS.

4. Here, the relevant dates are as follows:

a)	The dismissal took place on	17 October 2024
b)	Early conciliation began on	6 December 2024

c) Early conciliation ended on 7 January 2025

d) The claim was submitted on 20 February 2025

5. Three months from dismissal takes us to 16 January 2025, i.e. three months less one day, to be *within* three months as the statute requires. Early conciliation took 32 days. Adding those days takes us to 17 February 2025, so the claim was three days late.

6. To extend time, the test under section 111(2)(b) is whether:

a) it was reasonably practicable for the claim to have been made in time, and

b) if not, was it then made within a further reasonable period afterwards.

7. No dispute was raised about point (b) so we are only concerned with whether or not it was reasonably practicable for Miss Ward to have submitted her claim in time.

Findings of Fact

8. As already mentioned, Miss Ward contacted ACAS to commence early conciliation on 6 December 2024 and then on 11 December she contacted a firm of solicitors. They had an initial discussion with her and the outcome was recorded in an email. At that point they could not say definitely when the time limit would expire because early conciliation was still going on, but the rules were explained. She was also told that if she wanted them to take matters further and have the solicitors prepare a claim form on her behalf she would need to confirm that in writing.

9. For that initial consultation and advice she paid £150, for which she was invoiced. That was therefore the process for paying solicitors as she understood it: they would present an invoice and she would pay it.

10. There was a gap of nearly a month before she got back to them, on 8 January 2025. She emailed to confirm that early conciliation had finished and asked if she could discuss the next steps over the phone or by Teams. She had been in discussions with ACAS and believed that she had good prospects of success on the employment status issue, and had assembled a file of documents to prove it.

11. The solicitor emailed back that day to say that his hourly rate was £200 per hour and to let him know if she wanted to proceed on that basis.

12. That may have given her some pause for thought, and it was not until nearly two weeks later, on 21 January 2025, that she emailed back asking him to go ahead.

13. Although that agreement appears clear enough, for some reason he emailed again on 29 January to say that he had not heard back from her. She replied, on 2 February, to ask him to carry on with the work And then, on 5 February, he emailed her again to say that he would be able to do it in the week commencing 17 February and asking for £1600 plus VAT on account, on the basis that it would involve about eight hours' work. 17 February was however the last day on which the claim could have been within the normal time limits.

14. She was not familiar with the way in which solicitors work. The fact is that usually they will not be prepared to undertake a significant body of work of this sort without having a written agreement and money on account. She simply assumed that having agreed to the hourly rate and received an overall quote that the solicitor would get on with the work and invoice her in due course.

15. That understanding is apparent from her next email on 18 February. She reminded him that she had confirmed on 2 February (in her view) that she wanted him to proceed and asked whether she could pay half now and then half in a few weeks time. He responded that day to the effect that she had not confirmed and that he would need the money on account. She responded to ask him to continue with the process and said that she had not received the details with which to pay. He then sent her a letter the next day, 19 February, to say that having reviewed matters it was already too late to file a claim in time and urged her to do so without any further delay. She had already supplied him with her own draft, which she then submitted, the following day.

16. She also relies on her health during the relevant period. Ms Ward had a miscarriage in early January. She had been uncertain about whether she wanted the pregnancy to continue but in the event the miscarriage was a distressing event for her. She saw her GP on 17 January complaining of anxiety and panic attacks and was signed off for two weeks on grounds of bereavement. There were a number of follow-up appointments and blood pressure checks over the next few weeks during which her symptoms improved.

17. That all may have gone to explain the delay in contacting the solicitors again following her initial consultation in December but does not really explain the confusion which arose in February 2025. The nub of the matter was her misunderstanding that the solicitors had matters in hand and would invoice her in due course.

Applicable Law

18. Turning to the applicable law, the general approach was settled in a series of cases in the 1970s. Firstly, according to the Court of Appeal in **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA, the question of what is reasonably practicable should be given a "liberal construction in favour of the employee".

19. Secondly, it is a question of fact, not some refined legal concept. As Lord Justice Shaw put it in **Wall's Meat Co Ltd v Khan** 1979 ICR 52, "Practical common sense is the keynote."

20. Thirdly, it is for the claimant to show that it was not reasonably practicable. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint' — **Porter v Bandridge Ltd** 1978 ICR 943, CA.

21. But what does reasonably practicable mean in practice? In **Palmer and anor v Southend-on-Sea Borough Council** 1984 ICR 372, CA, the Court of Appeal held that it does not mean "reasonable", which would be too favourable to employees, and does not mean "physically possible", which would be too favourable to employers, but means something like "reasonably feasible".

22. **Dedman** also established the principle that where a person has consulted a skilled adviser, such as a solicitor, and receives negligent advice, that will not amount to a valid excuse and their remedy is against their solicitor.

Conclusions

23. However that is not the position here. Firstly, Miss Ward did not actually form a retainer or agreement with the firm of solicitors to act for her in submitting the claim form and so in practice she would have no redress against them. She would therefore be left without a remedy if time was not extended. Secondly, this is not a case of any negligent advice or failure on the part of the solicitors it relates squarely to a misunderstanding about payment arrangements and whether or not she had done enough to instruct them. There is no real dispute that there was a misunderstanding and that misunderstanding is sufficient to explain the delay. Had Miss Ward not contacted solicitors at all but set about assembling the relevant documents and submitting a claim for myself, as she ultimately did, there would have been no delay.

24. If it was necessary to go further, the misunderstanding seems to be an understandable one in the circumstances. I cannot see that any blame attaches to Miss Ward over it. The situation is similar in some respects to that of the

person who is entirely unaware of their right to bring such claim. If that lack of awareness is itself reasonable then, as is well-established, it will not be reasonably practicable to submit the claim in time. In this situation her lack of awareness of the risk of missing the deadline was certainly understandable and so I find that the test is met.

Employment Status

25. The next issue concerns employment status. On this issue too all of the evidence has come from Miss Ward. After the difficulties experienced over the time-limit issue she instructed a different firm of solicitors and has prepared a witness statement and a bundle of documents incorporating various documents from the respondent. A supplementary bundle of 11 pages was then added last week.

26. The respondent has not engaged to nearly the same degree. Croner became involved very recently and Mr Rahman was only contacted about this hearing last Friday. Over the weekend he made an application to confine this hearing to the two preliminary matters and to adjourn the rest, if need be, to another occasion, so as to allow Mr Ball, the company’s director, a further opportunity to submit a witness statement and to set out a positive case on the reasons for dismissal. (There was no objection to me dealing with the preliminary issues on the basis of the evidence available).

27. Apart from the fact that the respondent did not have legal representation until very recently, no explanation has been put forward for that lack of participation. Whatever the reason, the position now is that I only have oral evidence from Miss Ward. If that is contradicted by the documents it would be open to me to reject her evidence but otherwise there is no reason for me to do so. Some of her evidence was disputed on the basis of instructions from Mr Ball, but those instructions are not evidence and cannot be given the same weight. To achieve that equal balance he ought to have provided his own witness statement setting out those points in advance and then fielding questions about them.

Findings of Fact

28. My findings of fact therefore as follows. Springback is a construction company which works at various sites and on various projects. Mr Ball is the director and sole shareholder. There are a number of core employees. One is Mr Matthew Evans, also now a director, who recruited Miss Ward. They are now in a relationship. I also heard mention of Diane Crabtree, their book-keeper, Martin Ravenscroft and Karl Pocock. Understandably I do not have any documents relating to their employment status but Miss Ward explained, and I accept, that

Mr Pocock was in very much the same position as her and that he received various assurances that a contract of employment was in the pipeline. However in his case it did appear after much chasing and a delay of about two years.

29. As well as the core employees it has a number of contractors and subcontractors working on the different sites. Miss Ward began working at the company on 1 August 2022 as a labourer. Before then she had been working as a landscaper on a self-employed basis.

30. She submitted timesheets in order to record where she was working, i.e. on which site, but essentially she worked fixed hours from 8 am to 4 pm Monday to Friday and went where she was sent. Later there was an across-the-board change in everyone's hours so as to finish at 4.30 pm, which she accepted like everyone else.

31. There was no change in her pay which was, to begin with, at a flat daily rate of £120. Later her pay increased in five separate steps to £190 a day a few weeks before she was dismissed.

32. While she was with the company she was registered with the Construction Industry Scheme, which is an arrangement with HMRC. There was no need for her to provide invoices and the company paid her after deduction of tax.

33. She was allowed to take holiday providing that she gave advance notice to her line manager, Mr Evans, but she was not paid for those days. Occasionally she was paid when she was off sick. When she was away for any reason the other members of staff would cover and no substitute was provided by her or by the company.

34. When she was required to travel to different sites she was able to use a company car, a benefit only available to employees. (Again, this was disputed by Mr Ball but there was no evidence in the proper sense to set against that.) She was also included on the company insurance policy for these journeys.

35. They gave her an iPhone, an iPad and then later a laptop. She had a company email address and was issued with some uniform. In addition she had a Screwfix card in her own name so that she could collect deliveries. There was some dispute as to whether this was simply a Screwfix rule or whether, as she said, it was only something that employees were allowed to do by the company, but again I prefer her evidence on that point.

36. Her duties appear to have been quite various. She attended management meetings and took minutes on her laptop. Mr Ball wanted her to help with the

company's social media accounts. There was talk of her taking over from Ms Crabtree as the bookkeeper in due course. Occasionally she would be the most senior person left on site and so by default took over the duties of site manager from time to time. She had the codes and keys to access those sites.

37. There were also training courses provided for her. To begin with she was keen to establish herself in the company and to make herself more useful so at her own cost she undertook a first aid course, then a fire awareness course, then an asbestos awareness course. When Mr Ball became aware of this he said she should not have done that and that he would pay for them. In September 2024 she went on a free, five-day social media training course and was paid over that week. There is evidence of the payment from her bank statements.

38. As mentioned at the outset, she was never given a contract of employment. Nor was she ever given a contract suggesting that she was self-employed. She had various conversations with Mr Ball about this and was assured from time to time that it was in the pipeline.

39. Apart from that, from her point of view there were no issues with regard to her employment until she was summarily dismissed on 17 October 2024.

Applicable law

40. Section 230(1) Employment Rights Act 1996 defines an employee simply as someone who works under a contract of employment". Sub-paragraph (2) defines a contract of employment as:

> "a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing".

41. The question of what a contract of employment involves has been left for the courts to resolve and the starting point is the case of **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** 1968 1 All ER 433 QBD. There, the court set out the following three questions

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

    b) Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of [using the language of the day] master and servant?

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

42. Further guidance was given in **<u>Hall (Inspector of Taxes) v Lorimer 1994</u>** ICR 218 in which the Court of Appeal upheld the view of Mr Justice Mummery in the High Court that:

> "… this is not a mechanical exercise of running through items on a checklist to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, positive appreciation of the whole. It is a matter of evaluation of the overall effect of the detail… Not all details are of equal weight or importance in any given situation."

43. The sort of factors considered in that case included:

a) whether the worker's interest in the relationship involved any prospect of profit or risk of loss

b) whether the worker was properly regarded as part of the employer's organisation

c) whether the worker was carrying on business on his own account or carrying on the business of the employer

d) the provision of equipment

e) the incidence of tax and national insurance

f) the parties' own view of their relationship

g) the structure of the trade or profession concerned and the arrangements within it

44. The House of Lords subsequently endorsed the view in **<u>Carmichael v National Power plc</u>** 1999 ICR 1226 that certain elements formed part of an irreducible minimum, i.e.

a) control

b) mutuality of obligation – the obligation by the employer to provide work and pay and for the employee to perform it

c) that it be carried out personally by the employee.

45. As Mr Rahman pointed out, it is not a straight choice between being employed or self-employed, there is an intermediate category of “worker”. That is defined at section 230(3) of the Act and includes anyone working under a contract to personally to perform work or services. It is therefore a much broader definition. Instead of the requirements for being an employee – control etc. - the last one is the only requirement, the obligation to carry out work personally.

Conclusions

46. Very commonly cases on whether an individual is an employee or a worker or self-employed involve considering a contract of some sort, usually a contract drawn up by the organisation. There may then be a good deal of dispute over whether that contract genuinely reflects the working arrangements or is a sham, designed to prevent the employee claiming any employment protection. This is not a case of that sort. Miss Ward was registered under the CIS scheme but that is not an agreement with the respondent. This is essentially a scheme whereby HMRC is able to collect tax revenue directly from the contractor in much the same way as they do for employees. Otherwise everyone in the chain of contractors and subcontractors would need to be filing individual self-employed tax returns. It also reflects the fact that many contractors provide services over a period of weeks or months on the same project rather than having many contracts on the go at once. The fact of having a CIS card is therefore of little weight in deciding whether or not someone ought to be regarded as employed.

47. Starting with the irreducible minimum, I accept that Miss Ward was subject to the same degree of control, such as over her hours or place of work, as any of the other actual employees of the company. Again there was no contract or any provision which would be incompatible with status as an employee and she appears to have been indistinguishable from them.

48. Equally, the fact that there was mutuality of obligation, that she was required to work and that the company was obliged to provide work to her is shown by the length of the contract. It lasted over two years and the working arrangements varied little over that period. She had to get permission to take time off, for example, and in return she expected to slot back into the organisation on her return. There was never any question of her asking if she would be required in future or even when the contract will be coming to an end. Nor is there any suggestion that the company ever raised this possibility. Her position was open-ended, various and developing.

49. That only leaves the final element which is whether she was required to carry out the work personally. The reasons already given that is not really an issue here. There was no question of her providing a substitute or merely providing a service to the company. She was not in business on her own account providing those services to other customers and that has not in fact been suggested.

50. So the core requirements of employment status are met, as are the requirements for worker status although that possibility need no longer concern us. The two categories are not exclusive. All employees are workers but all workers are not employees.

51. Stepping back and looking at the arrangements more broadly, there is no real reason to conclude that these core elements are insufficient or that they are incompatible with other features of the working arrangements. It is true that she was not paid for her holiday, although she was sometimes paid her daily rate while off sick. She was held out as an employee to the outside world. That follows from the provision of an email account, company uniform, having a Screwfix card in her own name so that she could collect supplies, and her use of company vehicles. Although her position may have developed over time, necessary training was provided for her and she was paid for her time. A five-day social media course is a significant investment and no doubt the company was expecting a reasonable return in the form of future work. Essentially she was provided with all of the equipment she needed and worked closely with other members of staff. She was in a trusted position, with keys and access codes and certainly from time to time she was left in charge of sites. I also accept her evidence about chasing for a contract of employment from time to time. Consequently, if anyone had asked her about her employment status, I am satisfied that she would have responded that she had been told that she was employee and the contract was on its way. Overall I am quite satisfied that she meets the definition of employee.

Application to adjourn

52. As already mentioned, there was an application made over the weekend to adjourn the case to allow Mr Ball to submit a witness statement on the reasons for the dismissal. But it did not give any reason why Mr Ball had not done so earlier. Directions were given for both sides to exchange witness statements and he has simply not done so.

53. Rule 32 of the Employment Tribunal Rules of Procedure covers postponement requests, and where an application of this sort is made within seven days of the

start of the hearing there are limited circumstances in which can be granted. There are some circumstances in which the parties may consent to such a course. It may be granted where it is due to “an act or omission of another party or the tribunal”. But neither of those options applies. The last alternative is where there are exceptional circumstances, and no exceptional circumstances have been identified here. The fact is that the respondent ought to have provided evidence at an earlier stage and has chosen not to do so. It has chosen instead to rely on the preliminary issues already considered. That may have been done with a view to saving time and cost, but that does not mean that they should be allowed to do so now.

54. The Rules have to be interpreted in accordance with the overriding objective, set out at Rule 3, of dealing with cases justly and fairly. That includes:

a) ensuring that the parties are on an equal footing;

b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

c) avoiding unnecessary formality and seeking flexibility in the proceedings;

d) avoiding delay, so far as compatible with proper consideration of the issues; and

e) saving expense.

55. Taking these in turn:

a) both sides are represented, and to that extent they are on an equal footing, and they have had the same chance to provide their evidence;

b) two days have been allocated to this hearing, the usual period for claims of unfair dismissal, and an adjournment would inevitably add to the amount of tribunal time taken;

c) there should be flexibility in proceedings but that does not mean cases should simply be adjourned where one side would benefit from additional time or has not foreseen some important issue;

d) there would inevitably be a significant delay involved in any adjournment, probably of at least a further year; and

e) it would involve both parties in additional expense.

56. I have considered whether an adjournment should be on terms that the respondent pays the claimant's costs, and by Rule 74(2)(c) this has to be considered in these circumstances, but that does not answer the concern about delay.

57. Before the current Rules were in place there was Presidential Guidance - guidance from the President of Employment Tribunals - on seeking postponements of hearings, which was and is very much to the same effect. It provides that an adjournment should only be granted in exceptional circumstances. Some examples are given of the sort of reasons often relied on: ill-health on the part of a party or a witness; a party or witness is not available; a representative is not available; a representative has withdrawn; there are outstanding appeals to the Employment Appeal Tribunal; there are related civil or criminal proceedings which are ongoing; where there has been late disclosure of documents or a failure to disclose. Adjournments in those circumstances are by no means certain, but here no such reason has been put forward.

58. Fundamentally therefore, there is no reason here that would justify a further significant delay and the application is refused,

Unfair Dismissal

59. That takes us to the main question, as to whether this was a fair dismissal. That was dealt with on the basis of submissions from each side, although the respondent had the opportunity to ask questions of Miss Ward.

60. By s.98 Employment Rights Act 1996, the employer has first to show a fair reason for the dismissal. In this case the reason relied on is redundancy. The response form states:

> "Ms A Ward's (one of our sub-contractors) site work was no longer required as Springbank Contractors Ltd had to reduce the companies outgoings which included sub-contractors and we could fill Ms A Ward's non professional work roll with zero additional costs to the company."

61. That is a reference to Mr Ball's wife stepping in and taking over her duties at no cost to the company. That much is agreed. Ms Evans describes the dismissal in her witness statement:

> "21. On 17 October 2024 I called the office as I was unable to access my email server, and needed information about a job I was working on. Mr Ball come on the phone and demanded that I came to the office. I asked if the

matter was urgent as I was not due into the office until Friday that week and could it wait till then. I also asked Mr Ball what the issue was about but he wouldn't say and just said that he would tell me when I got there and that it needed to be today. Mr Ball also told me to bring my phone and laptop (company property) with me. I didn't think this was strange at the time as I had been having issues with both my phone and accessing documents that morning. I immediately headed back from London to the office.

22. When I arrived at the office I was ushered in to a side office away from my other colleagues. During the meeting I was told by Mr Ball that I was no longer needed, to hand over all company property and to leave immediately. When I ask[ed] why, I was told that the Respondents were cutting over heads and reducing finances.

23. Mr Ball stated that the meeting was classed as unofficial and refused my request to have another person in the room with me. I said that he was required to give me 2 weeks' notice as I'm employed and that he couldn't just get rid of me like that. I asked if there was an issue with my work. Mr Ball replied that the Respondent had no issues with my work, but that the Respondent were just cutting over heads. I protested and tried to discuss the issue with Mr Ball and he only replied that it was the end of [the] conversation and I was to leave immediately. I was ushered out of the office, down the stairs and out the door and was told to leave the premises immediately.

…

Reason for dismissal

28. The reason given for my dismissal by Mr Ball was that of financial reasons. However, Mrs Natalie Ball, Mr Ball's wife has now undertaken my role, despite not being qualified so to do. It is my firm belief that I was dismissed on grounds of my relationship with Respondent Director Matthew Evans.

29. Indeed, [the] Respondent documents as disclosed, focus predominantly on Mr Evans who resigned from the Respondent given Mr Balls unsubstantiated allegations against him."

62. Again, none of this was challenged. There is no obligation on the claimant to show the reason for her dismissal but her view is entitled to some weight. She refers in particular to the documents supplied by the respondent. Those documents are available in the bundle. They were all supplied by Mr Ball. From

page 98 onwards there are numerous text messages between her and Mr Evans, revealing that they were in a relationship. It is clear from these that they had their ups and downs and also that they were trying to keep their relationship private.

63. Then, from page 126, there are a number of timesheets. From page 138 there are documents relating to the Screwfix account. Finally there are two photographs. One appears to show some social media training going on and the other shows two people in a car park. It appears to be from a CCTV camera as it is taken from above but I cannot identify the two. The image is blurry. It may be Miss Ward and Mr Evans, but if not its purpose is altogether unclear.

64. These were all the documents provided in defence of the claim. Of these, the Screwfix records and timesheets relate to employment status and the other documents appear to relate to the relationship between Mr Evans and Miss Ward. That suggests that this relationship was the real reason for dismissal.

65. That view is just as consistent with Mr Ball's wife coming in to cover Miss Ward's duties. It is also given some additional support by the suddenness of the dismissal and the lack of consideration shown to Miss Ward on the day of her dismissal.

66. I did allow the respondent to put forward three pages of financial statements for the company, covering 2024 to 2026, on the basis that a number of documents from the claimant had been added at a very late stage, but I did not consider it appropriate to allow Mr Ball to give evidence about the company's finances without him having supplied a witness statement. The claimant would have had no chance to consider that evidence. Again, all this could and should have been set out in a witness statement.

67. The financial statements show a profit of about £46,000 in the years to Jan 24, then a loss of about £91,000, then more recently a small trading loss. On the basis of these documents it was said that it was inevitable that the respondent would have to make redundancies, and equally inevitable that it would have to be her, because she had not acquired an employment contract.

68. I find these financial statements have limited value as evidence. Finances fluctuate. As Mr Afeeva submitted, we have no information about the balance sheet. Receipts may not arrive in a smooth annual pattern. And they do not explain the suddenness of the dismissal. Nor is there any explanation as to why, if this was the main reason, Mr Ball chose to supply instead documents focussing on the relationship between Miss Ward and Mr Evans. Overall I

prefer the view that it was that relationship which was the real reason for the dismissal.

69. If that is wrong, it is still not clear that this was a redundancy situation. Section 139 of the Employment Rights Act 1996 (ERA) provides the definition of redundancy:

> (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to …
>
> (b) the fact that the requirements of that business
>
> (i) for employees to carry out work of a particular kind, or
>
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

70. So, the employer does not need to show that the need for Miss Ward's work had gone, just that it had reduced, or was expected to. But that is not the same as simply replacing her with an unpaid family member.

71. More generally, it is no defence to say that she was regarded as self-employed and therefore dispensable, or that that justified her selection. For the reasons already given, she was an employee and ought to have been treated as such.

72. However, given my conclusion about the real reason for dismissal, no question of a *Polkey* or other deduction arises. The respondent has not established a fair reason for the dismissal and so the claim succeeds.

Remedy

Unfair dismissal

73. Remedy was less contentious. Miss Ward has provided a schedule of loss, much of which was uncontested. Having reviewed it, I discounted separate claims for holiday pay and pension loss. Miss Ward was being treated as a self-employed person for payment purposes, but it does not necessarily follow that if she had been given a contract of employment her overall package would have increased. She would then have been entitled to holiday pay and a workplace pension, but that would, I conclude, have come at a costs in terms of her daily rate. In any event, there was no claim for failure to pay holiday pay in the claim form.

ACAS Uplift

74. I also considered the appropriate uplift for the failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. Given the lack of any procedure, the maximum 25% award was indicated. That amounted to a figure of £7,770. There is no award here for injury to feelings and Miss Ward obtained other employment after about three months, so her losses might well have been much greater. I did not feel that the absolute amount of that award, which does include a punishment element, was unreasonably high and so I allowed it in full.

Statement of employment particulars

75. Finally, there is a claim for failing to provide a statement of terms and conditions of employment. This is set out in section 38 of the Employment Act 2002.

76. This section provides that where a Tribunal finds in favour of an employee or worker in relation to certain claims (including unfair dismissal) and it is also evident that the employer has not met the requirement to provide a written statement of initial employment particulars (under section 1 Employment Rights Act 1996) the tribunal must make a further award of at least two weeks' gross pay and may, "if it considers it just and equitable in all the circumstances" make an award of four weeks' pay instead.

77. Given my finding that Miss Ward had been asking about her contract and it had been delayed for a long period, the full four-week period appeared appropriate.

Calculations

78. The relevant calculations are as follows. Unless otherwise stated, all figures are agreed.

(a)	Weekly gross pay	£950
(b)	Weekly net pay	£760

79. On this basis the basic award is £1,400

80. The elements making up the compensatory award are as follows:

(a)	Net loss of income	£31,080*
(b)	Future loss of income	£0
(c)	Loss of statutory rights	£500

Total	£31,580

81. *The figure for net loss was given as £39,896 in the schedule of loss but removing the claim for holiday pay (£8,816) leaves £31,080.

82. This figure needs to be uplifted by the ACAS award. That has been calculated as 25% of the loss of income figure, i.e. £7,770

83. Adding that uplift increases the compensatory award to £39,350.

84. Adding the basic award means that the total compensation for unfair dismissal is £40,750.

85. Four weeks' gross pay for failing to provide a written statement (the s.38 award) amounts to £3,800.

86. Adding that sum brings the total to £44,550.

87. That sum needs to be grossed up for tax, so that Miss Ward receives this amount after any deduction. The first £30,000 is tax free, as is the basic award and the award in respect of the written statement, so the taxable damages are as follows:

a)	Total	£44,550
b)	Basic award	(£1,400)
c)	Four weeks' pay	(£3,800)
Net		£39,350

88. The first £30,000 of the award is tax free, leaving £9,350. This tax year she will earn £31,200 gross. That will involve a tax bill of £3,726, all at basic rate, taking into account the personal allowance. Hence, her net annual salary will be £27,474.

89. Adding this further £9,350 of taxable earnings this year, her net earnings will be increased to £36,824.

90. Net earnings of £36,824 corresponds to a gross income of £42,888. (This can be verified with any online tax calculator, but pay at that level would result in a tax bill of £6,064, again at basic rate.)

91. So, instead of paying the usual tax bill of £3,726 she is likely to have £6,064 deducted, an increase of **£2,338.** Her compensation therefore needs to be increased by that amount.

92. The overall figures are therefore as follows:

(a)	Compensation for unfair dismissal, pre-uplift	£40,750
(b)	Uplift	£2,338
	Total	£43,088

93.	Section 38 award	£3,800
94.	Total	**£46,888**

Employment Judge Fowell

Date 23 June 2026

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If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

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