



EMPLOYMENT TRIBUNALS

Claimant: Ms N Terrett

Respondent: BUPA Occupational Health Limited

Heard at: Watford (via video) **On:** 01 July 2026

Before: Employment Judge R Russell

Representation

Claimant: In person (assisted by Michael Parker)

Respondent: Mr P Sangha, Counsel

JUDGMENT

1. The Claimant was not an employee of the Respondent at the relevant time. The complaints of unfair dismissal and wrongful dismissal/breach of contract are therefore dismissed because the Tribunal does not have jurisdiction to determine them.
2. The Claimant was a worker of the Respondent at the relevant time. The complaint of unauthorised deductions from wages relating to holiday pay will therefore proceed.

FULL REASONS

JUDGMENT with full reasons was given at the hearing on 01 July 2026 and written full reasons were requested by the Claimant at the hearing in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

Introduction

1. By way of a claim presented on 18 December 2024 the Claimant complains of unfair dismissal, wrongful dismissal/breach of contract, and a failure to pay holiday pay. Early conciliation began on 23 August 2024 and ended on 10 September 2024. By way of a response presented on 17 March 2025 the Respondent defends the claim.

2. This was a preliminary hearing to determine the Claimant's employment status with the Respondent. The statutory right not to be unfairly dismissed applies only to employees with the requisite qualifying period of service. A breach of contract claim in the Employment Tribunal also only applies to employees. The right to payment in lieu of holiday on termination applies to workers as does the right not to suffer unauthorised deductions from wages. The Claimant says that she was an employee. The Respondent says that she was neither an employee nor a worker but was a self-employed contractor.
3. I had a bundle running to 258 pages (digital). It was agreed at the outset of the hearing that I would consider the documents to which I was referred by the parties. Page numbers given in square brackets below are to page numbers in the bundle. For the Claimant I received witness statements from the Claimant, Martin Dace, Michael Parker and Eddie Parker. For the Respondent I received witness statements from Alice Bradley and Jenny Cooney. All these witnesses were questioned on their evidence. I was assisted by the skeleton arguments and oral submissions of both parties.
4. At the outset of the hearing the Claimant made an application to rely on an additional witness statement from Sylwia Nieciecka. This application was opposed by the Respondent who considered that (i) the evidence was not relevant to the preliminary issues to be determined at this hearing; and (ii) that the application was late having been made by email on 24 June 2026 (one week prior to the hearing). Sylwia Nieciecka was not available to attend the hearing. I allowed the application and gave reasons for doing so. In sum, I considered that there was little prejudice to the Respondent of allowing the application. While the evidence appeared to be relevant to the substantive issue of unfair dismissal rather than employment status, I noted that if a party was unable to attend the Tribunal to be questioned on their evidence, this may affect what (if any) weight could be attached to that evidence. The statement ran to two pages and the Respondent had been in possession of it for one week. I considered that the question of its relevance was a matter that could be addressed in submissions.

Issues

5. The issues that the Tribunal had to decide were set out at a previous hearing on 13 January 2026 before EJ Beck. These are:
6. Was the Claimant an employee of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?
7. Was the Claimant a worker of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

Findings of fact

8. The Claimant worked for Smart Medical Clinics Limited ("Smart Medical") from April 2017. Smart Medical provides private healthcare services to

individual members. The Claimant was engaged by Smart Medical via her intermediary company NT Projects Limited of which she is the sole director and shareholder [22].

9. The Claimant's work at Smart Medical was to act as Membership Manager for 4 clinics and to provide PA services to its Chairman and CEO Michael Parker. There was no written agreement governing the terms of the engagement between the Claimant and Smart Medical.
10. The Respondent is a health and care company, which operates private health centres. In December 2023 the Respondent acquired the training activity and assets of Smart Medical i.e. the 4 clinics.
11. Employees of Smart Medical transferred to the Respondent pursuant to a TUPE transfer. There were four individuals who were classed as selfemployed by Smart Medical for the purposes of PAYE. One of these was the Claimant.
12. As part of the due diligence process prior to the acquisition, Smart Medical was asked to provide details of relevant employees. On 14 June 2023 Smart Medical provided a schedule showing details of (i) employees; and (ii) self-employed staff. The Claimant was listed as one of the selfemployed staff [61]. It was noted that she had been engaged for 6 years as 'Membership Administrator, Accounts, Purchase Ledgers'. She was described as self-employed. She worked from home. Her hours were on an 'as required' basis. She was paid an hourly rate and her salary was 'as per demand'. She was subject to a notice period of 3 months and had a statutory holiday entitlement.
13. I find that, in practice, the Claimant worked on average around four days per week for Smart Medical. She typically chose not to work on Thursdays. She also provided other services to another client with whom she had worked for around 15 years. Michael Parker would have liked the Claimant to do more for him when working at Smart Medical but acknowledged the Claimant's other work commitments.
14. On 17 November 2023 Michael Parker provided the Respondent with an updated schedule of staff. This was updated as at 10 November 2023. The description of the Claimant's engagement differed significantly from that provided in June 2023 [70]. She was described as working both from home and an office location, that she was contracted to work 32 hours per week, and that she received expenses. While she was still described as 'self-employed' it was noted that she had a fixed contract for 3 years.
15. The Claimant was aware, in her role as Michael Parker's PA, of the contents of these schedules. She saw the schedules as part of the due diligence process. She did not, at that point, query why she was not included in the list of employees. She raised no issues during this process about the reference to her status as being self-employed.

16. On 15 December 2023 the Respondent's solicitors noted the difference in accounts given as to the Claimant's engagement and asked for a copy of the fixed term agreement and confirmation of when the 3 year period began [80]. They chased for a response on 19 December 2023 [79]. On 19 December 2023 Smart Medical's solicitors clarified that while the Claimant worked on a 'hours as required' basis this typically required her to work 32 hours per week. This clarification email continued: '...the contract for the services provided by Nicky is unwritten. Mike has verbally agreed a three year arrangement' [78]. Following further correspondence on the matter, on 20 December 2023 Smart Medical's solicitors confirmed that the information given on exchange was correct [75]. It provided a further updated schedule dated 14 December 2023 [74]. In this there is no mention of the Claimant being on a 3-year fixed term contract or working 32 hours per week. This version was the same as that from June 2023 save for the inclusion of expenses and the mention that the Claimant worked from home and the Bourne End office [74].
17. In sum, the final agreed account of the Claimant's terms of engagement with Smart Medical, signed off by Michael Parker at transfer, was that the Claimant was self-employed, there was no mention of a fixed term agreement, she worked on an 'hours as required' basis, and she had a 3-month notice period [124].
18. I find that there was never any written agreement between the Claimant and Smart Medical as to her terms of engagement. I noted that, despite the Claimant's oral account that there was a 3-year contract that was renewed, the written evidence signed off at transfer following discussion between the parties' respective legal advisers makes no reference to a 3 year contract [124]. Whether or not there was a 3-year fixed arrangement was not, however, a matter for me to determine.
19. There was no written agreement entered into between the Claimant and the Respondent when she began working for it. The arrangement was that she would continue on the same basis as she had worked before.
20. In respect of the Claimant's work for the Respondent, she invoiced for her services. On 15 January 2024 she asked if the Respondent needed further information so that she could be set up as a contractor [125]. She continued to work remotely on the Smart Medical membership accounts. She had some contact with Alan Cole (who was her initial point of contact) and later with Jenny Cooley from June 2024 but this was relatively hands off. She essentially worked autonomously on the Smart Medical membership as she had done before although she was provided with a BUPA email address. She had flexibility as to when she worked. She was paid following provision of an invoice where she would describe her hours of work. I find that the Claimant routinely began work at 10am and typically ended at 4pm although she had the flexibility to finish earlier and she did on occasions [175]. There was no system for checking the hours the Claimant worked. It was essentially taken on trust that she worked the hours for which she invoiced the Respondent for payment. Payment of the invoice was made to a business account in the name of NT Projects Limited [175]. The Claimant

was responsible for her own tax affairs. She received training on BUPA's systems. She provided her own laptop but BUPA provided her with headphones. She never asked for holidays or sick leave during her time with the Respondent. If she was unable to attend a meeting with the Respondent, she could reschedule.

21. The Respondent's Jenny Cooney and Alice Bradley met with the Claimant on 25 July 2024 to discuss her position. She was offered the opportunity of becoming employed. There is a difference in accounts as to whether the Claimant declined this. She says that she was not provided with a job description or proposed terms. Alice Bradley's account was that the Claimant declined the opportunity due to her other work commitments and because she was still working for Michael Parker. I find that the possibility of the Claimant becoming an employee was discussed but that this was not taken further.
22. The Claimant's engagement with the Respondent was terminated by the Respondent. The Claimant was given notice of this by letter dated 21 August 2024 [135]. Following this, the Claimant instructed her solicitors to issue a letter before action in respect of a debt claim on behalf of NT Projects Limited (her intermediary company). This was on the basis of a 'contract for services' based on a three year fixed term contract entered into on 15 December 2023 [154].

Relevant law

Employee

23. Section 230(1) of the Employment Rights Act 1996 ("ERA") defines an employee as 'an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment'. 'Contract of employment' is defined in section 230(2) ERA as 'a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing'.
24. What constitutes such a contract of service has been left to case law to define. It requires the application of a mixed or multi-factorial test as set out in *Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance* 1968 2 QB 497 and more recently endorsed by the Supreme Court in *Autoclenz Limited v Belcher* [2011] ICR 1157. In *Ready Mixed Concrete* [at 515], it was held that three conditions are necessary for there to be a contract of service:

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

25. In *Autoclenz* Lord Clarke [at 1163] noted: ‘Three further propositions are not I think contentious: (i) As Stephenson LJ put it in *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612, 623, “There must ... be an irreducible minimum of obligation on each side to create a contract of service.” (ii) If a genuine right of substitution exists, this negates an obligation to perform work personally and is inconsistent with employee status: *Express & Echo Publications Ltd v Tanton* [1999] ICR 693, 699G, per Peter Gibson LJ. (iii) If a contractual right, as for example a right to substitute, exists, it does not matter that it is not used. It does not follow from the fact that a term is not enforced that such a term is not part of the agreement: see eg the Tanton case, at p 697G’.
26. With regards to mutuality of obligations, the purported employer is obliged to provide work and the employee to undertake it (*Carmichael and anor v National Power Plc* [1999] ICR 1226, HL [at 1230]). The requirement to offer or accept work cannot be one-sided (*Thomson v Fife Council* EATS/0064/04). The legal obligation to offer and accept work may arise over a course of dealing (*St Ives Plymouth Limited v Haggerty* EAT/0107/08). An employee need not accept work every time it is offered but there must exist an obligation to do some work. Lord Leggatt in *Uber BV v Aslam* [2021] ICR 657 put it [at 690] as follows:
- ‘The fact, however, that an individual has the right to turn down work is not fatal to a finding that the individual is an employee or a worker and, by the same token, does not preclude a finding that the individual is employed under a worker's contract. What is necessary for such a finding is that there should be what has been described as “an irreducible minimum of obligation”:...In other words, the existence and exercise of a right to refuse work is not critical, provided there is at least an obligation to do some amount of work.’
27. In the more recent Supreme Court judgment of *Independent Workers Union of Great Britain v Central Arbitration Committee* (“Deliveroo”) [2023] UKSC 43, the ability to reject offers of work, work for competitors, and make oneself unavailable for work was considered ‘fundamentally inconsistent with any notion of an employment relationship’ [at paragraph 72].
28. The requirements of control, mutuality of obligations, and personal service are necessary minimum conditions, but not necessarily sufficient conditions, to determine that a contract of employment exists (*Revenue and Customs Commissioners v Atholl House Productions Limited* [2022] ICR 1059). What is required is a holistic evaluation of all the factual circumstances of the case (*Clark v Oxfordshire Health Authority* [1998] IRLR 125, CA).

Worker

29. The definition of worker is set out at section 230(3) ERA. A worker means ‘an individual who has entered into or works under (or where the employment has ceased, worked under) – a contract of employment, or 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’.

30. In short, the following are necessary constituent elements for a finding of worker status (*Bates van Winkelhof v Clyde & Co LLP* [2014] ICR 730, SC):
- a. a contract between the individual and putative employer (*Sejpal v Rodericks Dental Limited* [2022] ICR 1339);
 - b. to perform work personally (in *Pimlico Plumbers Ltd and anor v Smith* [2018] ICR 1511, SC it was held that a limited right of substitution is not inconsistent with the requirement to perform services/work personally);
 - c. for the benefit of the other party who must not be the individual’s client or customer (*Manning v Walker Crips Investment Management Ltd* [2023] ICR 1265).
31. In *Byrne Bros (Formwork) Limited v Baird* [2002] ICR 667, the EAT observed that ‘the essence of the intended distinction [in section 230(3)(b)] must be between, on the one hand, workers whose degree of dependence is essentially the same as that of employees and, on the other, contractors who have a sufficiently arm’s-length and independent position to be treated as being able to look after themselves in the relevant respects’ [at 677].
32. Insofar as the requirement for personal service is concerned, a key factor is whether the individual must provide work or services herself or whether she can substitute another. This factor has been subject to extensive discussion in the case law, which was reviewed in *Pimlico Plumbers*. In the Court of Appeal, Sir Terence Etherton MR summarised the principles that may be derived from the case law as:
- ‘Firstly an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally. Secondly, a conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the conditionality. It will depend on the precise contractual arrangements and, in particular, the nature and degree of any fetter on a right of substitution or, using different language, the extent to which the right of substitution is limited or occasional. Thirdly, by way of example, a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance. Fourthly, again by way of example, a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance. Fifthly, again by way of example, a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance’ ([2017] ICR 657, paragraph 84).

33. The guidance provided by the Court of Appeal in *Pimlico* amounts to two principles and then three further examples of how the principles might apply but these examples are neither definitive nor exhaustive. It is the role of the Tribunal to determine whether any right to substitute existed and, if so, what the precise nature of any restriction or fetter on the right to substitute is (*Stuart Delivery Limited v Augustine* [2021] EWCA Civ 1514). In the Supreme Court in *Pimlico*, it was suggested that there may be cases where it would be helpful for the Tribunal to ask what the dominant purpose of the contract was in order to consider the extent of any right to substitute. However, this does not negate the need to focus on the language of the statute.
34. Relevant considerations as to whether someone is a client or customer include whether a person agreed to provide services exclusively to that other party or to the world in general, and the degree to which the person is integrated into the other's operations (*Hospital Medical Group Limited v Westwood* [2013] ICR 415, CA).
35. The Supreme Court in *Uber* considered that the following factors are relevant to the question of whether an individual is in business on her own account: the degree of control the putative employer has, how dependent the individual is on the putative employer, and whether an individual is free to develop her own business. In evaluating the extent to which an individual is 'integrated' into the business, it can be helpful to consider whether an individual actively markets herself to the world in general or whether she has been recruited by the business to work as an integral part of its operations (*Cotswold Developments Construction Limited v Williams* [2006] IRLR 181).

Conclusions

36. I consider first the issue of whether the Claimant is an employee. There is no written agreement in this case. For a finding of employment (and worker) status, there must first exist a contract between the parties. The Respondent does not dispute that there is an agreement but it argues that it cannot properly be characterised as one of employment.
37. Dealing briefly with the question of control, I concluded that in this case control cannot be the decisive factor. There is no need for day-to-day supervision to find that control exists. In the present case, the relationship was conducted in the context of the Claimant having previously managed Smart Medical's membership and she continued to do so after this was acquired by the Respondent. I found Jenny Cooney to be a reliable and straightforward witness in her account that she had little day-to-day interaction with the Claimant but that she was more a point of contact. This was also consistent with the Claimant's own oral account of the relationship being hands off. In sum, the Respondent exercised little control over the Claimant. Her role was essentially to manage the legacy Smart Medical membership as she had done before.

38. As part of the 'irreducible minimum' to form a contract of employment there must be an obligation on the part of the Respondent to offer work and a corresponding obligation on the part of the Claimant to accept it. She need not accept every shift or hours that are offered to her provided, as Lord Leggatt put it in *Uber*, there is at least an obligation to do some amount of work. The question for the Tribunal is whether there was a requirement on the part of the Respondent to offer the Claimant work and for the Claimant to accept this.
39. In practice the Claimant was the person who continued to manage the legacy Smart Medical membership. Was there a requirement for a minimum amount of work to be offered and for her to accept it? This is an unusual case in which there is no written evidence from either Smart Medical or the Respondent of the terms on which the Claimant was engaged and what would be required of the engagement. There was a somewhat casual approach to the working arrangement premised on the idea that the Claimant would work for the Respondent as she had for Smart Medical before. This was on an 'as required' basis but, in reality, she would spend most of her time working for Smart Medical before it was acquired by the Respondent. I find that there was no requirement on the part of the Claimant to accept any work offered to her. Michael Parker was clear that during her time with Smart Medical he would have liked the Claimant to do more for him but that she was free to work elsewhere as indeed she did. She could, essentially, state the hours when she would be free to work. This arrangement continued when she worked for the Respondent. She was free to say what hours she would work and to work for other clients. She could make herself unavailable for work as she did when she unilaterally chose to work a shorter day and therefore only invoiced for those hours she worked. She could say no to being asked to attend meetings and need not give an explanation. She was entirely free to say when she would be available for work and when she would not be. She chose not to work on Thursdays but she could set her own hours.
40. I find that there was no mutuality of obligations present. There was no requirement on the part of the Respondent to offer work and no requirement on the part of the Claimant to accept it. As mutuality of obligations is part of the irreducible minimum of what is required in an employment relationship, it follows that the Claimant was not an employee of the Respondent. There is no need to consider other factors as the lack of mutuality of obligations is fatal to a claim for employment status. Notwithstanding this, I concluded that there were several other factors that were inconsistent with there being a contract of employment. These included the Claimant being responsible for her own tax arrangements, telling the Respondent when she would be unavailable for work meetings and setting her own schedule as to days and hours of work, working essentially on an 'as required basis', and providing her services via an intermediary. Indeed I have reminded myself that the existence of a separate company through which the individual provides her services (unless held not to reflect the true relationship between the parties) will normally preclude a finding of employee status. In this case, there is no suggestion that the Claimant was not providing her services via her own service company both to Smart Medical and the Respondent.

41. Having found that the Claimant was not an employee, there was no need for me to consider whether she has sufficient qualifying service to bring a claim of unfair dismissal. As she is not an employee, her claims of unfair dismissal and wrongful dismissal cannot proceed.
42. Turning to the issue of whether the Claimant was a worker, has the statutory requirement for personal service been met? In this case, there is no written provision for the right to substitute. The question of whether the Claimant could, in reality, send a substitute in her place does not assist in this case. The Claimant was the one person who knew the Smart Medical membership and had access to this confidential data. It is not the case that a substitute could be easily provided. As I concluded above, there was no requirement for the Claimant to accept work that was offered to her. I reminded myself that while the Claimant's ability to work as and when she chose to was not irrelevant to the question of personal service, it was a matter that more properly fell to be considered under mutuality of obligations.
43. The Respondent accepts that there is personal service in this case. Turning back to the language of the statute and considering the history of the relationship, I conclude that there was an undertaking for the Claimant to perform personally work or services for the Respondent.
44. Finally, I have considered whether the Respondent was in reality a client or customer of any profession or business undertaking carried on by the Claimant. The Claimant provided her services via a service company. There was no express written agreement that the Claimant would provide services exclusively to the Respondent. Indeed she did not do so. She provided services to at least one other client via her service company. There was nothing to stop her from offering her services to the world in general. That said, it was clear that the Claimant predominantly saw herself as integrated into the business of Smart Medical and then the Respondent's business. I concluded that she was integrated in some ways. While she worked largely autonomously, she had an email account with the Respondent and managed the legacy Smart Medical membership that was now part of the Respondent's business.
45. The Claimant assumed the financial risk insofar as she would not be paid if she did not work. It was equally clear that for some stretches of time while she was engaged almost on a full-time basis to manage the Smart Medical membership, the Claimant appeared to be largely dependent on this relationship both pre and post transfer.
46. In reaching my conclusion on this element of the worker status test, I weighed up carefully (i) the significant degree of flexibility enjoyed by the Claimant to work the hours she wanted against (ii) the level of integration into the business of the Respondent having acquired the Smart Medical clinics to whom she provided personal services; and (iii) the degree of dependency. On balance, the level of integration coupled with the degree of dependency leads me to conclude that the Respondent is not the Claimant's

client or customer. In other words, she is a worker for the purposes of section 230(3)(b).

Approved by:

Employment Judge Russell

22 July 2026

SENT TO THE PARTIES ON

22 July 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunaldecisions> shortly after a copy has been sent to the claimants and respondents.

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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practicedirections/