



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000006/2026

Held in Glasgow via Cloud Video Platform (CVP) on 18 June 2026

Employment Judge M Kearns

Miss R Brennan

**Claimant
In Person**

PLZ Soccer Limited

**Respondent
Represented by:
Mr P McGuire -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The reserved judgment of the Employment Tribunal following the preliminary hearing was that the claimant was a worker as defined by section 230(3)(b) Employment Rights Act 1996 and Regulation 2(1) Working Time Regulations 1998 except during the 'football off seasons', during which 'off seasons' there was no contract between the parties.

REASONS

1. The claimant performed work for the respondent as a media producer from 2 February 2024 until 13 November 2025 under a mostly oral contract, which both parties described as "freelance"; under exception of the six or seven week 'football off season' periods in June and July 2024 and 2025 when no work was offered or performed. On 2 January 2026 she presented an application to the Employment Tribunal in which she claimed that she was a 'worker' as defined by section 230(3)(b) Employment Rights Act 1996 ("ERA") and regulation 2(1) Working Time Regulations 1998 ("WTR") and that she was accordingly owed holiday pay under the WTR and arrears of pay under section 13(3) ERA because she had been paid less than the National Minimum Wage. The respondent disputed that the claimant was a worker and submitted that she was a self-employed contractor. A preliminary hearing was fixed to determine that issue.

Evidence

2. The parties had prepared a joint bundle of documents and referred to them by page number ("J"). The claimant gave evidence on her own behalf and Mr McGuire gave evidence for the respondent.

Issues

3. In the Supreme Court case of **Bates van Winkelhof v Clyde and Co LLP and Another 2014 ICR 730, SC**, Lady Hale identified three different categories of individuals recognised by statutory employment law. On the one hand are those employed under a contract of service (employees) (group (a)). On the other hand are those who are self-employed but enter into contracts to perform work or services for others. Within that latter (self-employed) category, the law draws a distinction between two different kinds of self-employed people: (b) those (genuinely) self-employed people who are in business on their own account and who carry out work for their own clients or customers, and (c) an intermediate class of self-employed 'workers' or contractors who provide their services as part of a business carried on by someone else.
4. The claimant in this case argues that whatever the label used by the parties, in reality her engagement with the respondent was as a 'worker' as defined by section 230(3)(b) Employment Rights Act 1996 ("ERA"). (As the definition of a worker in the WTR is identical to that in the ERA, I will refer to the ERA as including both hereafter, except where it is necessary to mention both.) The respondent disputes this and argues she was genuinely self-employed.
5. Four questions arise for determination
 - (i) *Was there a contract between the claimant and the respondent - whether express or implied and (if express), whether oral or in writing? Was there sufficient mutuality of obligation? (Mr McGuire submits that mutuality of obligation was lacking in this case).*
 - (ii) *If so, did the claimant undertake thereby to do or perform any work or services personally?*
 - (iii) *Did the claimant provide her services as part of a business or profession that she carries on?*
 - (iv) *If so, were the services provided to a client or customer of that business or profession?*

Findings in fact

6. The following facts were admitted or found to be proved.

7. The respondent is a small football media company that covers football fixtures in the Scottish Premiership, English Premier League and other divisions from world football. It offers football news, match analysis and interviews via its website, YouTube channel and social media platforms. It is run principally by its director, Mr Peter McGuire. A small amount of its revenue comes from social media. However, it is mainly dependent on sponsorship for its income, which tends to fluctuate. For this reason, the respondent engages independent freelancers – rather than employees - to deliver certain production services. The majority of the people who work for the respondent (including the claimant) have been hired on the verbal understanding that they are freelance.
8. With regard to remuneration for media production work, the respondent offers a set daily rate of pay. Mr McGuire works out what the respondent can afford to pay as a daily rate for specific jobs and people take it or leave it. The amount the respondent can afford depends on the level of sponsorship money coming in. When the claimant first started with the respondent in February 2024, the daily rate for production work was £50. It increased to £60 from August 2024.
9. The claimant undertook digital media production work for the respondent between 2 February 2024 and 13 November 2025 with breaks of 6 or 7 weeks each summer during the football 'off season'. She carried out tasks such as filming content or editing videos for journalists; running the YouTube livestream; setting up microphones and controlling equipment during shows. Mr McGuire was in overall daily control of the respondent's output and he gave the claimant instructions on her daily filming or video editing tasks – for example, whether she was to do clips from the live show or features on a specific player.
10. Except when live streaming or doing tasks at times specifically requested by Mr McGuire, the claimant generally regulated her own working hours, including lunch breaks. The respondent's working day normally starts around 10.30 am and shows are generally live streamed around 4pm. The claimant would normally come in around 10.30 am. She elected to take a full hour's break at lunchtime each day, whereas other freelancers did not. This was regarded as her choice and not challenged. In addition, the claimant was the only freelancer who did not routinely work until 5pm unless she was responsible for live streaming. Again, her movements were not questioned.
11. The claimant has worked weekends as a lifeguard for North Lanarkshire Council (NLC) for around ten years. She continues as a weekend employee with NLC. When she was first in contact with the respondent in February 2024, she responded to an advertisement on LinkedIn for a particular post. She was unsuccessful at interview for the post she had applied for. However, she was

offered and agreed to work for the respondent on Mondays and Fridays on a freelance basis. The respondent provided her with a template invoice and the claimant invoiced them monthly for her services. At the end of each month, the claimant would input the number of days she had worked and the daily rate on an invoice and send it to the respondent's finance department. In her invoices (68 – 72), the claimant stated under "description": "Freelance technical staff". The claimant only charged for days she worked. The table of payments made to her (J65) showed that she received payments every month between February 2024 and November 2025 (except for July 2024 and July 2025). Payments in June and December were lower, reflecting the start of the 'off season' or public holidays. (The September 2025 payment showed as zero because it was paid late due to the respondent having cash flow problems.) The claimant did not receive pay slips. The respondent did no media work during the 6 or 7 week football off seasons and they did not offer work to anyone at that time. The claimant did not provide services to them during those periods. The claimant was free to offer her services and take work elsewhere at any time if she chose to do so. However, with effect from August 2024, she did not have time to do so except during the 2025 'off season'.

12. The initial arrangement between the claimant and the respondent in February 2024 was verbal and there was no written contract. The claimant was treated as self-employed by HMRC for tax and National Insurance purposes. The claimant was not paid sick pay or holiday pay. No pension contributions were made for her. She did not raise the non-payment of any of these as an issue or grievance at any point during the period of her engagement with the company.
13. The respondent has a WhatsApp group (J58) entitled: "PLZ Team" which it uses for communication concerning work tasks. The claimant was in the WhatsApp group as were other freelancers.
14. The respondent had company accounts with the username 'PLZ Soccer' with YouTube and other platforms as well as a company account with Artlist software which enabled video clips and music to be downloaded for use in their programs. The claimant and others were provided with the user credentials and passwords for those accounts for use on company business via the team WhatsApp group (J64). The respondent also had a video camera and audio equipment available on their premises for use in the production work. The claimant and others used them when required for filming and recording. Otherwise, the claimant used her own laptop for the work she did for the respondent.
15. The claimant generally worked two days a week for the respondent from 2 February 2024 until the end of the football season in early June 2024. In a

WhatsApp message to the claimant on 19 July 2024 (J57), Mr McGuire asked her: *"Would you be interested in joining us 5 days week at PLZ starting 29 July?"* The claimant replied: *"I would definitely be interested in joining PLZ full time but could I ask what the day rate would be? I am rotated shifts until Aug 4th then on holiday until Aug 13th. I could start the 14th?"* Mr McGuire replied: *"The daily rate is £60 and a guaranteed 5 days. 14th August is ideal. Let me know."* The claimant responded: *"Would you be willing to let me work 4 days per week so I could have 1 day off and still work weekends."* Mr McGuire said that 4 days was fine by him. From 14 August 2024, the claimant generally worked Mondays, Tuesdays, Thursdays and Fridays.

16. There was no express contractual right to substitution and the claimant never sought to provide a substitute. The matter was not discussed or contemplated by the parties during the currency of the contract. With the benefit of hindsight, the respondent would have been open to permitting the claimant to arrange for a suitably qualified substitute to perform the services, subject to basic suitability and compliance checks had she asked to do so. However, the matter did not arise.
17. Between 3 and 6 November 2024, Mr McGuire ("PM") and the claimant ("RB") sent each other the following texts (J63): PM: 3 November 2024 *"Roisin, Could you come in for 8:45 tomorrow for a video interview at 9?"* RB: *"Yeh that's fine"* PM: 6 November 2024 *"Roisin, can you take tomorrow off too. Everyone is off and I am away at meetings all day. See you Friday morning."* RB: *"Sounds good"*.
18. The respondent did not have a holiday sheet. If the claimant decided not to work on one of her usual days, she would text Mr McGuire. On 1 November 2024 the claimant texted Mr McGuire (J39) and asked his permission to take a day off at short notice: *"Hi Peter sorry I forgot to say today before I left but is it OK if I have Wednesday off? It's our 2 year anniversary and we're going for an overnight in Edinburgh"*. However, on 29 November 2024 (J40) the claimant texted Mr McGuire to say: *"Hi Peter, I'm not going to be here next Wednesday or Thursday as in Manchester. I can work Tuesday instead if needed."* On 3 December, the claimant again texted Mr McGuire (J40) to say: *"Hi Peter, the concert tmr has been postponed, so I can work Wednesday and Thursday."* Mr McGuire responded with a thumbs up sign. When her Gran died (J42) and on another occasion when she had to take her mother to hospital (J44), the claimant simply informed Mr McGuire that she would not be in: *"Hi Peter I won't be in today. My mum is having to be taken up to the hospital just now."* No disciplinary action was taken and no sanction followed any absence because Mr McGuire viewed the relationship as one of self-employment.

19. On 15 November 2024, Mr McGuire sent the following message to all in the WhatsApp group (J63): *"Hi PLZ team, I have booked the Santa Lucia restaurant in Ingram St for 8:00 PM on the 18th December. I will pay for the food, everyone else has agreed to split the drinks bill. Let me know if you can make it please."*
20. In December 2024, the respondent posted on LinkedIn a photo of everyone in the respondent's studio in Christmas jumpers (J73) with the message: *"From everyone at PLZ Soccer thank you for your support in 2024."* The claimant was included in the picture.
21. In a text message dated 24th April 2025 (J61), Mr. McGuire asked the claimant *"Roisin, can we edit some pictures into Quickfire feature for PLZ Premium. Once the three short interviews are ready can you send them to Chris and he will load them behind the pay wall."*
22. On 18 July 2025, Mr McGuire had asked that everyone be there to meet the respondent's board on 1 August 2025.
23. On 31 October 2025, Mr McGuire sent the claimant the following WhatsApp message (J60): *"Roisin, if you can concentrate on adding pictures to Straight Talk with Roddy Forsyth that would be great. I would like to post this on premium on Saturday and release on Tuesday."*
24. The respondent did not have a disciplinary procedure. None of the freelance workers were ever disciplined or sanctioned if they were unavailable or for any other reason.
25. Following the respondent's cash flow problems and consequent late payment of invoices in September and October 2025, the claimant sent the following message to Mr McGuire on the PLZ Team WhatsApp group on 10 November 2025 (J58): *"Hi Peter, we've decided we'd like to speak with you as a group at 10:30 tomorrow to talk things through and discuss the plan going forward..."* Mr. McGuire replied *"Hi Roisin, all the staff have been paid including yourself. I have other business to conduct at that time and have arranged to speak to each freelance worker individually at various times."*
26. The claimant had prepared a schedule of all payments she received from the respondent for work done (J65). This showed that the claimant received payment from the respondent for work done in all months between February 2024 and November 2025 except July 2024 and July 2025. The schedule appears to show that the norm was that at least from 14 August 2024, the claimant worked the days the parties had agreed.
27. In her personal LinkedIn profile dated post March 2026 (J48), the claimant described her engagement with the respondent in the following way: *"Digital*

Media Producer and Technical Operator – PLZ Soccer – Freelance.....Delivered audio-visual production support for podcast and YouTube recordings ensuring high sound and video quality and resolving technical issues in real time...”

Observations on the evidence

28. The parties had produced a joint bundle of documents. The claimant gave evidence on her own behalf and Mr McGuire testified for the respondent. Both were good witnesses. Both made appropriate concessions and were measured in their evidence. Quite a lot turned on the interpretation of messages and documents in this case and there was a certain amount of ‘generalising from the particular’ on both sides.
29. I have commented on specific conflicts in the evidence in the discussion section below where relevant.

Applicable Law

30. Section 230 of the Employment Rights Act 1996 provides, so far as relevant as follows:

“230 Employees, workers etc.

- (1) *In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*
- (2) *In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*
- (3) *In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*
 - (a) *a contract of employment, or*
 - (b) *any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

and any reference to a worker’s contract shall be construed accordingly.”

31. Regulation 2(1) Working Time Regulations 1998 provides, so far as relevant:

“Interpretation

2.—

(1) *In these Regulations—*

.....

“worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) *a contract of employment; or*

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

and any reference to a worker’s contract shall be construed accordingly;”

Discussion and decision***Whether the claimant was a worker as defined by the Employment Rights Act 1996 and Working Time Regulations 1998******Background***

32. Employment law in this area has been affected by the seminal cases of *Autoclenz v Belcher* [2011] ICR 1157 and *Uber BV v Aslam and Others* [2021] UKSC. In *Autoclenz*, the claimants carried out car cleaning services on behalf of the respondent company. In order to obtain the work, they were required to sign contracts which stated that they were sub-contractors, and not employees, that they had to provide their own materials, that they were not obliged to provide services to the company, nor was the company obliged to offer work to them, and that they could provide suitably qualified substitutes to carry out the work on their behalf. As with the present case, in *Autoclenz*, the claimants sought to argue that they were ‘workers’ and thus entitled to be paid the National Minimum Wage and holiday pay. The employment tribunal found that the contractual documents the claimants had signed did not reflect the true agreement between the parties; that the claimants were required to perform their services under the direction and control of the company; and were obliged to carry out the work offered, and to do so personally notwithstanding the substitution clause in the contract. The tribunal also found that they would not have been offered work if they had not signed the

contracts, the terms of which were imposed by the company. The case ultimately went to the Supreme Court, which held that, in the context of employment, where, taking into account the relative bargaining power of the parties, the written documentation might not reflect the reality of their relationship, it was necessary to determine the parties' actual agreement by examining all the circumstances, of which the written agreement was only a part, and identifying the parties' actual legal obligations; and that, on the basis of the findings of the employment tribunal, it had been entitled to disregard the terms of the written documents in so far as they were inconsistent with those findings and to hold that the claimants were "workers".

33. In *Autoclenz*, Lord Clarke (at paragraph 25) quoted the judgment of Elias J (as he then was) in *Consistent Group Ltd v Kalwak* [2007] IRLR 560:

"57 *The concern to which tribunals must be alive is that armies of lawyers will simply place substitution clauses, or clauses denying any obligation to accept or provide work in employment contracts, as a matter of form, even where such terms do not begin to reflect the real relationship. Peter Gibson LJ was alive to the problem. He said this (p 697G): 'Of course, it is important that the industrial tribunal should be alert in this area of the law to look at the reality of any obligations. If the obligation is a sham it will want to say so.'*"

58 *In other words, if the reality of the situation is that no one seriously expects that a worker will seek to provide a substitute, or refuse the work offered, the fact that the contract expressly provides for these unrealistic possibilities will not alter the true nature of the relationship. But if these clauses genuinely reflect what might realistically be expected to occur, the fact that the rights conferred have not in fact been exercised will not render the right meaningless.*

59 *...Tribunals should take a sensible and robust view of these matters in order to prevent form undermining substance...*"

34. In her able submissions, the claimant referred to the case of *Pimlico Plumbers Ltd v Smith* [2018] UKSC 29, [2018] IRLR 872. That company used as its workforce 125 'contractors', including Mr Smith. They wore its uniforms, drove its liveried vehicles and were represented to customers as its workforce. They were booked to customers by the company, who invoiced for the work. However, their contracts said they were self-employed. They paid their own tax and NI and provided their own tools, equipment and insurance. Their contracts stated that there was no obligation on the company to give or the claimants to perform work. However, there was no formal substitution provision. During his engagement Mr Smith considered himself to be self-employed, paid his own taxes (on a trading basis) and registered for VAT.

However, when his engagement was terminated, he argued that he was an employee, failing which, a worker. The tribunal held on the facts that he was not an 'employee' but he was a 'worker', so his holiday pay claim could proceed. The Supreme Court held that it had been open to the employment tribunal to find that Mr Smith was a worker on those facts.

35. The claimant also referred to the *Uber* case (citation above), which concerned the status of Uber taxi drivers. Their contracts with Uber were argued to have been carefully drafted to exclude working time and national minimum wage liabilities. They were permitted to work for other companies; were responsible for their own vehicles and licensing; and were self-employed for tax purposes. There was no uniform or company livery for their vehicles. The only real control was that required by statutory public vehicle hire regulation. Substitution was not allowed. Uber argued that the drivers did not provide services for the company; and that - on the contrary - the company was a taxi business providing an app-based service to the drivers. The employment tribunal held that the true relationship was not reflected in the 'carefully crafted' documentation. The claimants were held to be workers whenever they switched on the app and were able and willing to accept assignments. On appeal, the EAT ([2018] IRLR 97) held that that was a conclusion open to the tribunal, relying primarily on the power to look behind contractual documentation to the reality of the relationship as sanctioned in *Autoclenz*. The Supreme Court ([2021] UKSC 5) found unanimously for the drivers and held that they were workers during periods of actual working, when they were logged onto the app in light of the following factors:

- “(1) all questions of remuneration were fixed by Uber; the only way the drivers could increase their pay was by working more hours on those fixed amounts;*
- (2) all other contractual terms were drafted and imposed by Uber;*
- (3) drivers could choose when to turn on the app, but once logged on the choice of work was subject to constraints by Uber, including disciplinary penalties for too few fares;*
- (4) although the drivers provided the cars, these were subject to conditions by Uber, who provided all the technology and operated their own rating system for drivers and customers; and*
- (5) Uber not only collected all the fares, but also deliberately limited a driver's contact with the customer.*

It was said that: *“Overall, the picture was one of a system tightly controlled by Uber for its own benefit, with little input from the drivers....”*

36. When the *Uber* case, got to the Supreme Court, Lord Leggatt JSC, delivering the judgment of the Court, restated the *Autoclenz* principle at paragraph 69: *“Critical to understanding the Autoclenz case, as I see it, is that the rights asserted by the claimants were not contractual rights but were created by legislation. Thus, the task for the tribunals and the courts was not, unless the legislation required it, to identify whether, under the terms of their contracts, Autoclenz had agreed that the claimants should be paid at least the national minimum wage or receive paid annual leave. It was to determine whether the claimants fell within the definition of a “worker” in the relevant statutory provisions so as to qualify for these rights irrespective of what had been contractually agreed. In short, the primary question was one of statutory interpretation, not contractual interpretation.”*
37. Lord Leggatt went on to say in paragraphs 70 to 71 that it is important to take a purposive approach to statutory protection and that the purpose of employment legislation is to protect vulnerable workers. *“The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.”*
38. In *Uber* at paragraph 71 Lord Leggatt quoted the Employment Appeal Tribunal in *Byrne Bros (Formwork) Ltd v Baird* [2002] ICR 667 as follows: *“The reason why employees are thought to need such protection is that they are in a subordinate and dependent position vis – a – vis their employers: The purpose of the Regulations is to extend protection to workers who are substantively and economically in the same position. Thus the essence of the intended distinction 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.”*
39. At paragraph 73 of *Uber*, Lord Leggatt quoted with approval *Hashwani v Jivraj* [2011] UKSC 40; [2011] 1 WLR 1872 on the distinction between workers and the genuinely self-employed. In that case, the Supreme Court held that an arbitrator was not a person employed under “a contract personally to do any work” for the purpose of legislation prohibiting discrimination on the grounds of religion or belief (now in the EqA). *“Lord Clarke, with whom the other members of the court agreed, identified (at para 34) the essential questions underlying the distinction between workers and independent contractors outside the scope of the legislation as being:*
- “whether, on the one hand, the person concerned performs services for and under the direction of another person in return for which he or she receives remuneration or, on the other hand, he or she is an independent provider of services who is not in a relationship of subordination with the person who receives the services.”*

The present case

40. The claimant in this case argues that whatever the label used by the parties, in reality, her engagement with the respondent was as a 'worker' as defined by section 230(3)(b) Employment Rights Act 1996 ("ERA") and Regulation 2(1) of the Working Time Regulations 1998. The respondent argues that she was genuinely self-employed. As explained in paragraph 3 above, there are two categories of self-employed people for present purposes: (i) those the law regards as genuinely self-employed, who are in business on their own account and who carry out work for their own clients or customers; and (ii) an intermediate class of self-employed 'workers' who provide their services as part of a business carried on by someone else. The respondent argues the claimant's self-employment belonged to category (i). The claimant says it was in category (ii).
41. Under section 230(3)(b) ERA and Reg 2(1) WTR, the four issues set out in paragraph 4 are addressed as follows:

Mutuality of obligation

- (i) ***Was there a contract between the claimant and the respondent - whether express or implied and (if express), whether oral or in writing? Was there sufficient mutuality of obligation?***
42. The first question to be considered under the statutory 'limb (b) test is whether there was a contract between the parties at all. There must be a contract, whether express or implied, and if express, whether written or oral. Mr McGuire submitted that: *"The most significant factor in this case is the absence of mutuality of obligation. PLZ Soccer was under no obligation to provide work to Ms Brennan and Ms Brennan was under no obligation to accept work offered by PLZ Soccer."*
43. There is caselaw suggesting that an 'irreducible minimum of mutuality of obligation' between the parties is required to establish limb (b) worker status: See (Byrne Bros (Formwork) Ltd v Baird & Others 2002 ICR 667 (EAT); South Tyneside Metropolitan Borough Council v Toulson EAT 1333/01; Bamford & Others v Persimmon Homes NW Ltd EAT 0049/04; and Younis v Trans Global Projects Ltd & Another EAT 0504/05. However, in Singh v the Management Committee of the Bristol Sikh Temple & Others EAT 0429/11 the EAT treated mutuality of obligation as a means of determining whether there was a contract in existence between the parties at all and indicated that for limb (b) worker status, the mutuality of obligation test is less stringent than that required for an employment contract (where there must be an obligation to provide or pay for work on the one hand and an obligation to perform the work on the other. See IDS Employment Law Handbook on Employment

Status (November 2024) Chapter 3; paragraphs 3.69 – 3.71). Also, in *Nursing and Midwifery Council v Sommerville* 2022 ICR 755 CA, the Court of Appeal held that an ‘irreducible minimum of obligation’ is not a prerequisite of worker status. However, there is some suggestion that that case turned on its own facts and that *“the ruling cannot be taken as authority for the proposition that there can be an overarching worker contract covering periods of non-work without some continuing obligation on the worker to do some work.”* (ibid 4.14 – 4.15)

44. I considered the facts of this case. From 2 February 2024 until the end of the football season in early June 2024, the claimant worked two days a week for the respondent. In a WhatsApp message to her on 19 July 2024 (J57), Mr McGuire asked her: *“Would you be interested in joining us 5 days week at PLZ starting 29 July?”* The claimant replied: *“I would definitely be interested in joining PLZ full time but could I ask what the day rate would be? I am rotated shifts until Aug 4th then on holiday until Aug 13th. I could start the 14th?”* Mr McGuire replied: *“The daily rate is £60 and a guaranteed 5 days. 14th August is ideal. Let me know.”* The claimant responded: *“Would you be willing to let me work 4 days per week so I could have 1 day off and still work weekends.”* Mr McGuire said that 4 days was fine by him. From 14 August 2024, the claimant generally worked Mondays, Tuesdays, Thursdays and Fridays. This appeared to me from the documentary and oral evidence to be the negotiation of a new contract to start 14 August 2024. Furthermore, it was a contract in which on behalf of the respondent, Mr McGuire was *“guaranteeing”* 4 days’ work a week and the claimant was agreeing to provide this. I concluded that on the basis of what the parties had agreed, there was sufficient mutuality of obligation (at least from 14 August 2024) to suggest that there was a contract in existence of the sort described in section 230(3)(b) between the parties and that the less stringent mutuality test for limb (b) worker status had been met for the claimant’s engagements during the football season. Since this appeared to be against the backdrop of their existing relationship, I inferred that there had been sufficient mutuality of obligation for the contract from February to June 2024 as well.
45. However, Mr McGuire also submitted that the claimant exercised control over her own availability. He argued that she was free to accept or decline work. I accepted Mr McGuire’s evidence to the extent shown in the WhatsApp messages. The evidence on this was not entirely consistent (see paragraph 18). In one message, the claimant asked permission for time off at short notice for an anniversary celebration. In the other messages, she informed Mr McGuire what would be happening. On 29 November 2024, she stated she would not be in the following week as she was going to Manchester. She proposed working an alternative day instead and then changed it back when the event was cancelled. This did suggest she had a degree of latitude in

whether and when to accept work. She also notified Mr McGuire of time she would be taking for two important personal commitments. Mr McGuire submitted that no disciplinary action was taken and no sanction followed because the relationship was one of [genuine] self-employment. Thus - he said – the facts showed that the claimant was not obliged to accept the work offered.

46. The recent caselaw is unhelpful to the respondent on this point. It suggests that for the less stringent 'limb (b)' (of section 230(3)) worker status mutuality test, all that is required is an underlying obligation to do some work for the respondent during contracted periods even if the worker retains the right to turn some work down. (See **Addison Lee Ltd v Lange and Others 2019 ICR 637; Aslam & Others v Uber BV supra**) The Lange case is discussed in the IDS Employment Law Handbook on Employment Status at paragraphs 4.13 and 4.14 as follows: *"The EAT in Lange distinguished the Court of Appeal's decision in Mingeley v Pennock and anor (t/a Amber Cars) 2004 ICR 727, CA, which held that a taxi driver who had an arrangement with a firm that supplied him with customers in return for £75 per week was not in 'employment' for the purposes of what is now the Equality Act 2010 (EqA) (the test for which is essentially the same as the definition of a 'limb (b) worker' set out in S.230(3)(b) ERA). The EAT noted that the critical distinction was that, in Mingeley, the employment tribunal found that there was no requirement at all for the driver to accept any of the fares offered by the operator, whereas here the tribunal found that there was an underlying obligation on L to do some work for AL Ltd."*
47. In terms of mutuality of obligation, what is required for worker status is that there is a continuing obligation on the worker to do some work for the respondent. I have concluded that that was in place in this case as shown by the text exchange at paragraph 15 and the schedule of payments the claimant received from the respondent at (J65), which demonstrated that the claimant received payment from the respondent for work done in all months between February 2024 and November 2025 except July 2024 and July 2025. The schedule suggests that the norm was that the claimant worked the days the parties had agreed. However, she retained the right to take days off and to turn some work down. On current case law, that is consistent with the less stringent mutuality of obligation test for limb (b) worker status. Thus, it appears to me that there was sufficient mutuality of obligation between the parties to support a contract for limb (b) purposes.
48. Mr McGuire also argued that the evidence showed that there were periods when no work was available for the claimant, particularly during the football off-season [a six or seven week period from around 7 June to early August each year] and that during those periods:

- No work was offered.
 - No work was expected.
 - No retainers were paid.
 - No obligation existed on the respondent to provide work.
 - No obligation existed on the claimant to remain available.
49. Mr McGuire submitted that the claimant was free during those periods to work elsewhere or not work at all. In particular, he stated (and the evidence showed) that during the off-season, no contributors were engaged and no work was being undertaken by the business. The claimant was not required to attend, was not paid, was not on standby and required no permission to undertake work elsewhere. He argued that this period demonstrates the absence of any continuing mutual obligation between the parties and is inconsistent with the existence of either an employment relationship or worker status.
50. The claimant's submission in response to this was that: *"the operational gap in June and July (page 28, para 5.6) was simply the natural, predictable football off-season inherent to the Respondent's media business. UK law is clear that seasonal pauses do not wipe out worker status or erase statutory rights for the periods worked."* I took the claimant to be submitting here either that an overarching or 'umbrella' contract continued to exist during the off season when she was not working for the respondent or alternatively, that each block of work during a football season amounted to a discrete contract to perform services. In the case of an overarching or umbrella contract, the central question is whether, during periods of non-work there is an obligation on the employer to provide work and on the putative worker to perform any work which becomes available. That was not the case here. Thus, I concluded that Mr McGuire was correct in relation to the periods in between football seasons (which extended to six or seven weeks). There was clearly no mutuality of obligation during those periods. Thus there was no over-arching or umbrella contract covering the whole of the claimant's period of engagement with the respondent (February 2024 to November 2025). I turned to consider whether the claimant's working periods amounted to discrete contracts. I concluded that - for the reasons given in paragraph 47 above - there was sufficient mutuality of obligation during each football season to meet the less stringent limb (b) worker mutuality test on the facts of this case. Therefore, each football season was a separate contract.
- (ii) ***Did the claimant undertake to do or perform any work or services personally?***

51. An essential requirement for both employee and worker status is an undertaking to perform work or services personally. A genuine unfettered right of substitution negates the obligation to personally perform the work or services and thus indicates that a person was not a 'worker' as defined in the legislation.
52. Beyond the text exchange in July 2024, the claimant did not have written terms and conditions of contract in this case. This was not a situation like that in some of the seminal cases where there is a 'carefully crafted' contract designed (by 'armies of lawyers') to exclude worker rights. There was no written substitution clause in this case.
53. Mr McGuire testified and argued in his submissions that although there was no express contractual right to substitution and - as the claimant submitted - she never sought to provide a substitute, he would have permitted her to arrange for a suitably qualified substitute to perform the services, subject to basic suitability and compliance checks. (I inferred from the fact that it was never attempted by the claimant that the subject was never discussed by the parties or contemplated during the currency of the contract – at least by the claimant).
54. The claimant argued that in reality, it would have been operationally impossible for her to send a substitute. Her submission was that her role required logging into the respondent's company accounts with YouTube and other platforms as well as a company account for Artlist software which enabled video clips and music to be downloaded for use in their output. The claimant and others were provided with the user credentials and passwords for the relevant company accounts for use on company business via a WhatsApp group message (J64). The claimant also referred to a photograph (J74) which showed her operating the respondent's own physical camera and audio equipment during a video shoot. She put it to Mr McGuire in cross examination that he would never have allowed an unvetted stranger to handle their commercial hardware or access their secure corporate systems. She submitted that she was hired for her personal skills, and that personal service was strictly required. With respect to the claimant, I did not see why the fact that the respondent had company subscriptions or valuable equipment should make it impracticable or operationally impossible to send a suitably qualified and capable substitute.
55. However, as the claimant submitted, (with reference to Pimlico Plumbers), any right of substitution must be genuine and unfettered if it is to defeat the obligation of personal service. If the reality of the situation is that no one seriously expects that an individual will seek to provide a substitute, the fact that a contract expressly provides for an unrealistic possibility will not alter the true legal obligation. On the other hand, if a contractual right to send a

substitute exists in reality, it does not follow from the fact that a term is not enforced that it is not part of the agreement.

56. It may be that the respondent would be prepared to accept a suitably qualified and capable substitute going forward and that they may decide to incorporate such a term into freelance contracts in the future. However, their difficulty in the present case is that there was no evidence that a substitution clause had been contemplated by the parties at the time, or discussed or agreed by them. Put shortly, there was no evidence that at any point during the currency of the contract, the parties had intended such a clause to form part of their agreement. Mr McGuire's evidence was given with the benefit of hindsight. I have to look at the reality of what was actually agreed at the time. There was no evidence in this case regarding what usually happens in this sort of media operation and whether it is usual in the industry for people to send substitutes. Mr McGuire pointed to the three or four messages from the claimant (sometimes at short notice) letting him know that she would not be coming in because she was doing something else. He said that in these circumstances, he would ask someone else to do the work. However, that was the evidence at its highest. It does not add up to a right of substitution. In these circumstances, I concluded that the contract did not contain a right of substitution at all and that the claimant had undertaken to do or perform services personally for the respondent.

(iii) Did the claimant provide her services as part of a business or profession that she carried on?

(iv) If so, were the services provided to a client or customer of that business or profession?

57. Even where there is a contract 'whereby an individual undertakes to do or perform personally any work or services for another party to the contract', section 230(3)(b) ERA requires consideration of whether the claimant was carrying on a business and if so, whether the respondent was a client or customer of that business. This is a question of fact in each case. By way of example, the IDS Handbook (reference above) at paragraph 8.7 states:

"Factors to consider could include the degree of control exercised by the 'employer', the exclusivity of the engagement and its typical duration, the method of payment, what equipment the 'worker' supplies, and the level of risk undertaken. Factors such as the individual having business accounts prepared and submitted to HMRC, being free to work for others, being paid at a rate that includes an overheads allowance, and not being paid when not working, can all be relied on to support the view that he or she is running a business and that the person for whom the work is performed is a customer of that business."

58. Mr McGuire submitted that the relationship of the claimant to the respondent was not one of subordination. He argued that the claimant was not integrated into the respondent's business such that she was unable to work for others and that, indeed, she was not only employed in a weekend job with North Lanarkshire Council which – he stated - had always taken precedence over her work for the respondent but she had also applied for another position with South Lanarkshire Council for which he had given her a reference. The respondent's position is that the claimant was an independent provider of services, and not in a relationship of subordination with the person receiving the services.
59. I considered the facts on this issue as follows: The following facts suggest either that the claimant was not running a business on her own account or that the respondent was not a client or customer of such a business or both:
- (i) *The respondent fixed the daily rate of pay. The claimant had no input into this, other than to take it or leave it. No evidence was given about the claimant having any overheads and no allowance was made for any.*
 - (ii) *The claimant was given a template invoice to use by the respondent, rather than using her own business invoice.*
 - (iii) *With regard to control and direction of work tasks, the respondent actively directed the claimant's daily video editing tasks – for example, whether she was to do clips from the live show or features on a specific player. (See paragraphs 9, 21 and 23).*
 - (iv) *With regard to the exclusivity or otherwise of the arrangement, Mr McGuire argued that the documentary evidence showed that the claimant maintained separate employment with NLC throughout the relevant period. He submitted that she accepted that she had retained that employment because of the benefits and pension attached to it. He submitted that on occasions, the claimant prioritised her NLC commitments over work offered by the respondent. It was correct that there had been one or two occasions when the claimant prioritised NLC work. However, she worked weekends for NLC and weekdays for the respondent so that the two roles seldom clashed. Also, the claimant worked for NLC as a lifeguard. She was not working for them as a producer or using any of the skills she used in her work for the respondent. During the period when she worked for the respondent, she did not work for anyone else as a producer or doing any work similar to the work she did for them. Where someone is self-employed and works for a number of different parties using the same core skills or professional qualifications for them all, that may suggest their work*

for each of them is in a professional/client or business/customer relationship but where – as here – the work for each of her two jobs was entirely different, it is less suggestive of the claimant running a business and the respondent being one of her customers and more akin to her having two part time jobs.

- (vi) *Although Mr McGuire said in evidence that he had been asked to give a reference for the claimant in respect of another position she had applied for with South Lanarkshire Council, this appeared to have been for an employed role, though nothing came of it. It was not for production work. He submitted that the claimant was free to offer her services and take work elsewhere at any time if she chose to. However, with effect from 14 August 2024, the claimant regularly worked for the respondent 4 days a week (except during the 2025 'off season'). With regard to her services as a producer, the claimant provided these exclusively to the respondent during her engagement by them. Given her weekly commitment to the respondent and NLC (which from 14 August 2024 added up to her working six days a week), I concluded that it was not practically realistic that the claimant would work as a producer for others and I concluded that she was effectively in a state of partial economic dependence on her particular relationship with the respondent. This tended to suggest a relationship closer to worker status than providing the services of an independently run business to the respondent as a customer.*
- (vii) *There was no evidence of the claimant actively marketing her services elsewhere either generally or through word of mouth or networks.*
- (viii) *The claimant submitted (and I accepted) that a genuine freelancer runs an independent venture and takes entrepreneurial risk and that she did neither.*
- (ix) *With regard to whether the claimant was integrated into the respondent's organisation, she pointed to the following facts. She was added to the "PLZ Team" WhatsApp Group. On 18 July 2025, Mr McGuire had asked that everyone be there to meet the respondent's board on 1 August 2025. She was invited, along with others to the Christmas restaurant outing and in December 2024, the respondent posted on LinkedIn a picture of everyone in the respondent's studio in Christmas jumpers (J73) with the message: "From everyone at PLZ Soccer thank you for your support in 2024." The respondent argued that whilst the claimant regularly contributed to productions, attended meetings and communicated with others involved in the business, those matters were entirely consistent with the operation of a freelance media production environment. I concluded that the inclusion of the*

claimant in the team WhatsApp group and the LinkedIn picture /Christmas message did suggest a degree of integration. The latter in particular gave the impression of the respondent holding the claimant out to their subscribers as part of the respondent's organization as opposed to being a self-employed contractor.

- (x) The claimant was provided with the user credentials and passwords for the respondent's accounts for use on company business via the team WhatsApp group (J64). The claimant also used the respondent's video camera and audio equipment in her production work. Otherwise, she used her own laptop for the work she did for the respondent.*

60. On the other hand, the following facts are more suggestive of genuine self-employment:

- (i) Except when live streaming or doing tasks at times specifically requested by Mr McGuire, the claimant regulated her own working hours, including lunch breaks. Although the claimant had lodged the two texts at (J63) set out at paragraph 17 in which Mr McGuire requested the claimant to attend at a particular time on 4 November 2024 and to take a day off on 7 November 2024, (J63) these were the only examples I was taken to in the bundle. With regard to timing generally, Mr McGuire's evidence (which I accepted as it was more specific than the claimant's and I did not understand it to have been challenged) was that the claimant would normally come in around 10.30 (the claimant agreed with this), would take an hour for lunch and would leave before 5pm except when responsible for streaming.*
- (ii) The claimant also dictated her own occasional unavailability. She informed the respondent of any days she would not be available and once (in December 2024) changed them at short notice. However, the schedule of payments (J65) suggested this was not a frequent occurrence and that from 14 August 2024, the claimant generally stuck to her four days a week, which was more consistent with worker status than a business/ customer relationship.*
- (iii) The claimant was not paid for days she did not work nor was she paid during the football off season lasting six or seven weeks a year. The claimant invoiced the respondent monthly stating on her invoice: "Freelance technical staff".*
- (iv) The claimant was treated as self-employed by HMRC for tax and National Insurance purposes.*
- (v) The claimant was not paid sick pay or holiday pay. No pension contributions were made for her. She did not raise the non-payment of*

any of these as an issue or grievance at any point during the period of her engagement with the company.

- (vi) *The respondent did not have a disciplinary procedure. None of the freelance workers were ever disciplined or sanctioned if they were unavailable or for any other reason.*

Conclusion

61. I am required to apply the words of the statutes to the facts of this case. In applying the statutory language, it is necessary both to view the facts realistically and to keep in mind the purpose of the legislation (paragraph 87 *Uber*). The purpose of these statutory words is to extend the protection of the ERA and WTR beyond the categories of employee and apprentice to those who are in a similar subordinate and dependent position to employees. By contrast, the protection does not apply to people who have a sufficiently arms-length and independent position. They are treated by the legislation as being able to look after themselves and not in need of this protection. I have to decide on which side of this line the claimant falls. The essential question here is the distinction between those individuals covered by the section 230(3)(b) ERA protection/ Reg 2(1) WTR and independent contractors, who are outside the scope of the Act/Regulations.
62. The claimant submitted that the practical reality of her engagement with the respondent satisfied all the statutory criteria for worker status under Section 230(3)(b) of the Employment Rights Act 1996. Her view was that the respondent's description of the relationship as "freelance" did not reflect the reality of the situation. It is fair to say that it was not only the respondent who described the claimant as "freelance". The claimant did so in her invoices submitted for payment and continued to do so in her LinkedIn profile well after the end of her engagement with the respondent. However, as the claimant pointed out, *Uber* is authority for the proposition that the label the parties themselves may give to a contract is not determinative.
63. Although the claimant was self-employed, her regular attendance with the respondent four days a week over a duration of more than a year, her exclusivity to the respondent (she only did production work for them) and her consequent level of economic dependence on them were more suggestive of a worker than someone actively marketing services to customers. Notably, it was the respondent that determined her rate of pay and gave her a template invoice to use. Although – within certain parameters - she determined her hours, there was a level of control and direction by the respondent of her daily tasks for which she received instructions from Mr McGuire. The claimant

would carry out the work instructed using her own laptop but also, the respondent's camera and sound equipment and the respondent's subscriptions to various software applications and online resources. The claimant had the ability to dictate her availability, which is normally more consistent with genuine self-employment. However, the evidence suggested she had only made herself unavailable on three or four occasions of short duration. Furthermore, the claimant appeared to be integrated into the respondent's business. She was part of their team (per the WhatsApp group); and the respondent held her out to subscribers as integral to its business in December 2024, which would be an odd thing to do if she were an independent business owner and they were a customer.

64. Thus, although there are facts pointing in both directions, in my view, the preponderance of the evidence in this case points to the claimant being a worker rather than carrying on a business undertaking of which the respondent was a customer. Since she has also shown that she worked under a contract whereby she undertook to do or perform personally work or services for the respondent, she has met the definition of a worker as defined by section 230(3)(b) ERA and Regulation 2(1) WTR during the football seasons but not during the 'off seasons'.

Date sent to parties

15 July 2026