



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Jenkins

Respondent: Ms Jules Dawson (1)
Mr Clive Dawson (2)
Ms Carole Dawson (3)
Ms Ruth Kielty (4)
Mr Graham Dawson (5)
At Home Care Group Limited (6)

Heard at: Croydon (via CVP)

On: 22, 23, 24, 25, 26 and 29
June 2026

Before: Employment Judge Leith

Representation

Claimant: In person
Respondents 1 to 5: In person
Respondent 6: Ms Bell (Counsel)

JUDGMENT

The claim is dismissed.

FULL REASONS

Claims and issues

1. This hearing was listed by EJ McLaren to consider the following issues (as set out in the Case Management Order of 12 January 2026):

“13.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

13.2 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

13.3 If she was an employee which respondent or respondents were the

employer?

13.4 If she was a worker with which respondent or respondents did she have this relationship?"

Procedure, documents and evidence heard

2. I heard evidence from:
 - 2.1. The Claimant;
 - 2.2. Lynn Lloyd;
 - 2.3. The First Respondent;
 - 2.4. The Second Respondent;
 - 2.5. The Third Respondent;
 - 2.6. The Fourth Respondent;
 - 2.7. The Fifth Respondent;
 - 2.8. Helen Morgan, Director of the Sixth Respondent.
3. Each of the witnesses gave their evidence by way of a pre-prepared witness statement, on which they were cross-examined.
4. There were two bundles before me – one prepared by the Claimant, containing 1,557 pages, and one prepared on behalf of the six Respondents, which contained 427 pages. Some documents appeared in both bundles.
5. I discussed the timetable for the hearing with the parties at the start of the hearing. The First to Fifth Respondents were all advancing the same case, and shared the cross-examination of the Claimant between them. The timetable was therefore:
 - 5.1. The first day would be spent reading the witness statements and key documents cross-referenced.
 - 5.2. The Sixth Respondent would have 90 minutes at the start of day 2 for cross-examination of the Claimant.
 - 5.3. The First to Fifth Respondents would then have the remainder of day two and the first hour of day three for cross examination of the Claimant and of her witness, Ms Lloyd. I explained to the First to Fifth Respondents that it was a matter for them how they apportioned that time between themselves and between the two witnesses.
 - 5.4. The Claimant would then have the remainder of day three and all of day four for cross-examination of the Respondent witnesses. I explained to the Claimant that it would be for her to decide how to apportion the available time between the six witnesses.
 - 5.5. Submissions would heard on the morning of day five, with the Sixth Respondent having 15 minutes, the First to Fifth Respondents having 45 minutes (to be divided between themselves as they saw fit) and the Claimant having 30 minutes. I explained that if a party relied upon written submissions, the time I spent reading those written submissions would be subtracted from the overall time available for submissions.

6. At the end of the evidence I heard submissions from Counsel for the Sixth Respondent (supported by written submissions and an authorities bundle), the Third Respondent (on behalf of the First to Fifth Respondents) and the Claimant (supported by written submissions).
7. Almost all of the parties expressed at various points during the process that the timetable did not give them sufficient time. I reminded the parties of the overriding objective set out in rule 3 of the Employment Tribunal Rules of Procedure 2024, and in particular of the importance of proportionality within proceedings. By the end of the hearing I was satisfied that all parties had had an adequate opportunity to advance their case.
8. At the start of the hearing, I explained to the parties that it was important that they did not interrupt or talk across each other. I was required to remind the parties of that on numerous occasions. Notwithstanding those frequent reminders, the Claimant and the First to Fifth Respondents regularly interrupted each other during their respective cross-examinations. I bear in mind, of course, that each of those parties were self-representing, and the subject matter of the claim involved close and personal relationships. I have been careful to separate the challenges that arose during the hearing from my assessment of the evidence itself.
9. I gave full reasons orally on the final day of the hearing. The Claimant requested written reasons, which I now provide with the judgment.

The evidence

10. I start with an overarching comment regarding the evidence and my approach to it. The case concerns the work done by the Claimant as live-in carer for a service user (who I refer to in this judgment as the Service User – her name is wholly immaterial). The Service User is the mother of the First to Fifth Respondents.
11. With the exception of Ms Morgan, who gave evidence for only a relatively short period of time, each of the witnesses to a greater or lesser degree demonstrated at times a dogmatic unwillingness to accept even self-evidently uncontroversial propositions in cross-examination. It was apparent (and unsurprising, given the nature of the work that the Claimant was engaged to do and the very personal nature of the relationships at the heart of the engagement) that feelings ran high. I was also conscious that a not inconsiderable amount of time has passed since the matters at the heart of the claim.
12. The Claimant enjoined me a number of times to “let the evidence speak for itself” (by which she meant the contemporaneous documents). In light of the matters I refer to above, I consider that that is undeniably the correct approach to adopt. In reaching my factual findings, I have therefore preferred the contemporaneous documents wherever possible.

13. I explained to the parties at the start of the hearing that I would only read documents within the bundles to which I was specifically referred. The bundles included various WhatsApp messages, including transcripts of two WhatsApp Groups – one containing First to Fifth Respondents, which was referred to by the parties as the “Sibling Group”, and one containing the Claimant plus the First to Fifth Respondents, which was referred to by the parties as the “S&M Group”. I adopt the parties’ nomenclature.
14. In the course of the evidence I was referred to specific messages from both of those WhatsApp groups. In closing submissions, I was asked by both the Claimant and the First to Fifth Respondents to read the entirety of the S&M Group so that I would see the specific messages I had been referred to in their proper context. I was asked by the Claimant to also read the entirety of the Sibling Group. Notwithstanding their considerable length, I have read both.
15. References in this judgments in [square brackets] are to page numbers in one or other of the bundles; where the number is prefaced by a [C] it is to the Claimant’s bundle, and where it is prefaced by an [R] it is to the Respondents’ bundle.

Factual findings

16. I make the following findings on balance of probabilities. I have not dealt with every area canvassed before me; rather, I have focused on those necessary to reach a conclusion on the issues of employment and worker status.
17. The Claimant is an experienced care worker.
18. The Sixth Respondent is a business finding carers, companions and personal assistants for clients. The Sixth Respondent’s website describes itself as introducing self-employed carers only.
19. The Sixth Respondent operates by means of a portal, on which carers register. Clients can then search for carers via the portal. Once an introduction has been effected and a carer has started delivering services to a client, the Sixth Respondent’s portal can also (in principle) be used by the carer to invoice the client.
20. The Sixth Respondent does not charge any fee to carers for registering on the portal, or being introduced to a client. The Sixth Respondent’s website noted that in order to be active on the portal, a carer would need to be self-employed and registered with HMRC. They would also need to have self-employed carer insurance [R142].
21. The Claimant registered with the Sixth Respondent in December 2022. The Claimant’s evidence was that she had not filled in a registration form, but had made contact with the Sixth Respondent via email. Her evidence was

that she provided the Sixth Respondent with a copy of her Certificate of Insurance, showing that she had public liability insurance as a carer up to the value of £1,000,000 [R153].

22. The Sixth Respondent's website included a document entitled "Terms and Conditions of Carer Registration" [R144]. That document included the following terms:

"4.2. This Agreement does not give rise to a contract of employment between AtHome and the Carer, nor shall it constitute a partnership or joint venture. AtHome shall have no responsibility for the supervision or control of the Carer before, during or after the Engagement.

[...]

4.5. AtHome does not guarantee that any profile or other Application Information will generate any particular level of suitable enquiries or even any Engagements. The Carer is under no obligation to accept any Engagements to which they have been offered by Clients using the Portal, by email or verbally.

[...]

"5.5. The Carer shall be expected to complete any number of ID checks with AtHome and to supply proof of address on their portal which will be available to clients to access. Registration may include requests for but not limited to the following documents:

- a) CV showing evidence of previous care work (acknowledging that a Companion may not have experience as a carer nor have worked in a regulated setting)
- b) DBS (on the update service if enhanced) / PVG check
- c) Evidence of Covid- 19 Vaccination status
- d) ID (Passport or Driving Licence)
- e) Driving licence (if available)
- f) if not British, proof of Settled or Pre-Settled status, including share code.
- g) Proof of address (utility bill issued within the last 3 months (mobile phone not accepted), council tax statement, or bank statement)
- h) Certificate(s) of Qualification
- i) Confirmation and proof to their client of public liability insurance / or self-employed carers insurance
- j) If self-employed, evidence of self-employment including UTR number.
- k) Minimum of two written references with full details and permission for AtHome and the client to contact them verbally; and
- l) A Photo and video

[...]

5.20. In the event that the Carer is unable to provide the Services to the Client for any reason, the Carer may suggest a suitably qualified substitute to perform the Services on their behalf, provided that the substitute shall be required to enter into direct undertakings with the Client and is approved in writing by the Client and fully registered and onboarded with AtHome prior to assignment to the role. It is the Carer's responsibility to ensure that any proposed substitute possesses the necessary skills and qualifications for the satisfactory completion of the Services.

[...]

6.4. AtHome is not responsible for the payment of fees for the Carer's provision of Services to the Client and shall not act as a facilitator between the Carer and the Client. AtHome Care cannot get involved with disputed funds or be held liable for unpaid funds by the Client to the Carer."

23. The Claimant's evidence was that she had not been on the website and consequently had not seen the Terms and Conditions of Carer Registration. There was no evidence before me that she had been sent a copy of them, or signposted towards them.

24. In the event, the Claimant was not introduced to any client by the Sixth Respondent prior to March/April 2023.

25. In or around March 2023 the Fourth Respondent posted an advert via the Sixth Respondent. The advert said this:

"Live-in carer for companionship, outings and light household duties for 91 year old lady in Wallington, Surrey"

26. At all relevant times the Second and Fourth Respondents held a Power of Attorney for financial affairs in respect of the Service User.

27. The Claimant's evidence was that she did not see that advert at the time. On 30 March 2023, Jane Lewis (who was then a Director of the Sixth Respondent) emailed the Claimant as follows:

"We have a lovely placement in Surrey available, please could you let me know if you are interested to know more and available."

28. The Claimant replied asking for some more information. Ms Lewis responded as follows:

"Hi Sally. It's a lady in Surrey, mainly companionship and encouragement, taking her out for lunch. £145 per day."

29. A Zoom meeting was arranged between the Claimant and the First and Fourth Respondents on 2 April 2023 to discuss the role. On the same day, the First and Fourth Respondents also met with another carer on the Sixth Respondent's portal via Zoom. The First Respondent's evidence was that the meeting with the Claimant was not an interview process.

30. Also on 2 April 2023, Ms Morgan emailed the Claimant [C45]. Regarding substitutes, she said this:

"You mentioned your 2-week respite carers, and to have everything in place, we would like to get them on the system and ID checked in preparation going forward,

Can you pop over their details so we can get that sorted out?"

31. Following the Zoom meeting, the First and Fourth Respondents decided to progress with the Claimant [C993 at 11:42]. The Fourth Respondent emailed Ms Morgan as follows:

"So, Jules and I have had a chance to discuss the Zoom video calls with Beata and Sally, and would like to take Sally on as a self employed carer for Mum, with a proposed start date of Monday 17th April 23.

Agreed daily rate of £145, including her car, for 10 hr working day - 2 hours off. Double time for bank holidays.

We have considered Sallys preferred working pattern of 12 weeks on, 2 weeks off, and feel this could work well for Mum, who doesn't like change. Interested in the fact that Sally can bring onto your platform 3 or 4 carers that she has worked well with, in the past - look forward to more information in this respect in due course.

Expenses - Shopping, outings / lunches out, mileage claims (at 45 p per mile) etc to be paid direct to Sally.

Wait to hear from you, after you've had a chance to go back to Sally.

Hopefully all acceptable to her, and we can progress to contract stage, subject to references."

32. Ms Morgan then emailed the Claimant as follows [C46]:

"Just heard back from the client and they would like to take you on as a self Employed carer for the position discussed from 17th of April on 12 weeks on 2 off.

Can you confirm this is good for you and you accept, and we will start the ball rolling with confirmations.

As per my last email, this is subject to you tagging with cares we can ID etc before you start the engagement. There is no cost or charge to them in any way for this it is just so we fulfil our responsibility to the client and know who we are sending in to our client!! We won't be scheduling them at all until you are happy to stay in placemen its just a formality, so hope you agree to this for safeguarding.

So congratulations, once it's all confirmed, and we have buttoned down the detail I'll send over all the info, and in the mean time if you can let us know your tag team details, we can get that all eared [sic] too."

33. The Claimant replied explaining that she would prefer to make sure the placement was good first, and that she would work around her substitutes in terms of time off – she suggested that, for example, if they were free on the ninth week but had other work booked in after that, she would take her break then [C47].

34. Ms Morgan responded [C48]:

"Sure, we would need to ID check them etc if they are going to tag with you, but of course let's wait until we have the engagement confirmed. As you know it doesn't cost them anything to be with us, we don't take any fees from you, and we make sure we get the best negotiated pay etc for you, so if they are going to tag with you, we would need to onboard them at the same time as you take the placement so we know that it's going to work etc going forward, but we would leave the tagging to you guys to suit"

35. On 5 April 2023, Ms Morgan emailed the Firth, Fourth and Fifth Respondents [R161]. She explained that the Sixth Respondent would DBS check the Claimant's tag carers at no extra cost. At the Claimant's request, she asked the family to nominate one person for the Claimant to have contact with to streamline communication. The Fifth Respondent responded that the Fourth Respondent would be the main contact, but that the family would like to set up a WhatsApp group to provide additional support to the Claimant and to "share any routine daily wellbeing, any minor concerns and casual photos of [the Service User] on any trips out etc". He also asked to delay the start date to from 17 April 2023 to 24 April 2023 [C55].

36. The evidence of the Fourth Respondent was that the Claimant had explained during the Zoom call that she had referred to the possibility of a WhatsApp group and explained that that was how she liked to operate. Her evidence was also that the Claimant agreed to be added to the S&M Group.

37. Also on 5 April 2023, Ms Morgan emailed Lynne Lloyd and Tina Gale, the two individuals the Claimant had nominated as her tag team carers [C52]. She said this:

“Hope you are ok, Sally has mentioned you will likely be tagging with her on the next assignment and we have told the client we will DBS/ID check you, etc, and then let you all get on with planning directly with each other and the client!

Can you pop into <https://hire.athomecaregroup.co.uk> and register your email, then if you can pop in your photo, certificates DBS etc and we can then create your profile for you. Any problems let us know.

As I said to Sally, this is just to get you onboarded so the client is comfortable that you have all the info they need, we won't contact you unless you want us to after that!”

38. In the interim, First to Fifth Respondents continued to discuss in the Sibling Group whether they wished to proceed with the Claimant. Some of their reservations appeared to be due to concerns about the approach of the Sixth Respondent. There was also some discussion about how they would cover the Claimant's time off (on the understanding that the arrangement would be that she would work twelve weeks on and two off). One particular area of concern appeared to be the possibility that they would have to pay another agency fee to locate cover carers; another was how in practical terms they would find a carer to work for only two weeks at a time.

39. Within the discussion, the First Respondent said this:

“If I didn't like Sally, I would definitely say walk away. The agency stinks. I feel we are given 12 weeks to find out whether Sally is as good as our 25 minute meeting. We have no way of knowing how she will interact with mum. So I think employ her and then we are going to perhaps have to visit mum quite a lot to get a feel for how it is going and have lots of communication with Sally. This is all on the understanding that there is no more fees for the tag carer.”

40. The First Respondent's evidence was that she was using the word “employ” in an informal rather than formal sense, and that she would use the same phrase about, for example, arranging for a plumber to do some work on her house.

41. On 6 April 2023, Ms Morgan emailed the Claimant asking if the start date could be changed from 17 April 2023 to 24 April 2023 at the request of the family [R170]. The Claimant agreed to the change, but noted that if they let her down again or moved dates she “won't be happy”.

42. Ms Morgan replied to the Claimant as follows [R170]:

“Absolutely.

I have told them as it's the start you may agree to move, which you have now confirmed which is great, but ongoing is 12 weeks on 1 off continuously from the start of the contract! (unless you want your tag to do more or less which is at your discretion)

For your peace of mind, they also have to commit financially to us upfront with our fees within 48 hours of you both signing the contract and before they get your direct contact details, so you can be sure everything is in place as they will be committed and financially invested in your placement before you even start, so it gives you peace of mind whilst you wait to start.

Don't forget, just call if you need to chat over anything, but rest assured. 😊”

43. The Sixth Respondent provided a template contract to the First Respondent. The First Respondent completed various parts of the contract then signed it (as the client) on 6 April 2023. Ms Morgan then sent the Claimant a copy a request to sign the contract digitally, via the signature platform used by the Sixth Respondent. The covering email to the Claimant said this:

“helen morgan has requested you to review and sign Client_Carer Engagement Contract

[...]

You are about to engage in a Client and Carer agreement.

We offer a client and carer agreement for both parties to use at their discretion. This document is not mandatory and should be entered into freely by mutual agreement between the carer and the client if both parties decide to use the agreement. AtHome Care Group is not included in this agreement and we cannot arbitrate or mediate if there is an alleged breach of this or any other contract or agreement between the carer and client.”

44. The Claimant’s evidence was that notwithstanding what the email said, it was not open to either her or the First Respondent to use a different form of contact to that provided by the Sixth Respondent.
45. The parties to the agreement were described as the “Client” and the “Carer”. The agreement also referred to the “Care Recipient”, who by implication was the individual to whom the Carer was providing care. The Care Recipient was not a party to the agreement. Neither was the Sixth Respondent.
46. The contract provided as follows [C68]:
- 46.1. The duration of the assignment was to be 12 weeks on, 2 weeks off. It was for the carer (the Claimant) to arrange tag cover for her weeks off “by direct agreement with the client”.

- 46.2. The daily rate of pay was to be £145 based on a 10 hour working day. The Claimant would be paid £25 per call for night wakes, up to three calls per week (and night care options would be discussed if more than three night calls per week would be required).
- 46.3. The Claimant would be paid double time on bank holidays and triple time at Christmas.
- 46.4. The services to be provided were as follow:

“• To ensure a healthy daily routine including shower/bath, hearing aids in, healthy meals, to ensure mum is sleeping in her bed.

- To encourage exercise
- To take mum on trips out.
- To take mum to routine appointments – doctor, hospital, hair, nail etc.
- To make sure all medication is administered.
- To undertake grocery and household shopping
- To undertake light cleaning duties including washing and iron of mum's clothes, watering mum's plants, topping up bird seed.
- To offer companionship
- To respond to mum's call for help during the night on a rare occasion ie up to twice a week but anything more, care will be reviewed.”

- 46.5. Attached to the contract front sheet was a set of terms and conditions. The terms and conditions were branded with the Sixth Respondent's logo, although they did not suggest that the Sixth Respondent was a party to the agreement. Insofar as relevant, they provided as follows.

“1.3 The Carer will be an independent contractor (in other words, self-employed) and nothing in this agreement shall render the Carer the employee, worker, agent or partner of the Client and the Carer shall not hold him / herself out as such. The provision of one Assignment shall not give rise to any entitlement on the part of the Client to offer any future Assignments and shall not confer on the Client or the Carer any legal rights or create an employment relationship between the Client and the Carer. The Client acknowledges that the Carer may provide their Services with respect to other individuals or organisations and there is no obligation on the Carer to provide Services, exclusively or not, to the Client.

[...]

1.8 The Carer may appoint a suitably qualified substitute to perform the Services on their behalf, provided that the substitute meets with the prior approval of the Client, not to be unreasonably withheld, shall be required to enter into direct

undertakings with the Client, including with regard to confidentiality. The Client will continue to pay the Carer their fee as provided in clause 2.1 below and the Carer shall arrange for the remuneration of, and any expenses incurred by, the substitute through the AtHome Care Portal. The Carer will not be paid for any period during which neither the Carer nor any substitute provide the Services. The Carer will continue to be subject to all duties and obligations under this agreement for the duration of the appointment of the substitute.

1.9 In the event that the Carer is unable to provide their Services on a temporary or permanent basis, the Carer will ensure that whichever carer is assuming caring responsibilities for the Care Recipient is fully briefed with regards to the needs of the Care Recipient. The Carer shall ensure a smooth handover to any substitute / replacement Carer and will be responsible for ensuring the substitute / replacement has all the necessary information needed to provide the Services.”

1.10 The Carer's Assignment is subject to a DBS check from the Disclosure & Barring Service in accordance with the Rehabilitation of Offenders Act 1974 and the Police Act 1997 and recommended registration of the annual update Service throughout the duration of their Assignment. The Carer shall inform the Client if at any time during their Assignment there are any changes affecting their DBS. The Carer shall inform the Client immediately if at any time during the Assignment they are convicted of any criminal offences or any indictments or police cautions. Failure to notify the Client of any such convictions, indictments or cautions may result in immediate termination of this agreement.

[...]

1.12 The Carer confirms that they have taken out the appropriate public liability insurance or self-employed carers insurance at their own expense and covenants to maintain such insurance for the length of the Assignment.

[...]

2.2 The Carer shall submit invoices to the Client for their fees including expenses on a weekly basis depending on the start date via the AtHome Care portal. The Client agrees to pay the Carer within 48 hours of receiving the invoice.

[...]

2.5 The Client shall reimburse the Carer's reasonable out-of-pocket expenses exclusively incurred in providing the Services provided it has received all relevant vouchers or receipts, or other evidence as the Client may reasonably require, to support the expense in each case. As far as is reasonably possible, the Carer will agree any expenses relating to the Care Recipient and their care in advance."

2.6 Where the Carer has to travel for the performance of their Services under this agreement, they shall be entitled to charge the Client for such travel provided that it is the cheapest most reasonable mode of travel. All travel expenses shall be agreed in advance prior to commencing the Assignment."

[...]

2.8 The Carer shall be responsible for accounting to HM Revenue & Customs for any Income Tax and National Insurance Contributions or similar contributions that legally are required to be paid in relation to the fees received from the Client. The Carer shall be fully responsible for and indemnify the Client against any liability or claim for:

- a. taxation howsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law; and
- b. any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Carer or any substitute against the Client arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission by the Client."

4.1 The Carer must never delegate his /her duties and responsibilities to anyone else without the Client's prior knowledge and agreement."

[...]

4.4 The Carer recognises that the wishes of the Client are paramount in the provision of the tasks outlined in any care plan and/or as outlined in the assignment details agreed between each other.

4.5 The Carer shall provide the Services in accordance with the Client's initial request as well as those made and agreed upon thereafter, and confirmed in writing following conversations, or in the care plan, or any associated

information, including medication schedules and specific condition information.

[...]

4.7 The Carer shall ensure that there is clear and regular communication between themselves and the Client with regards to the Services requested and provided to the Care Recipient.”

47. The agreement provided that if no car was provided by the client, the carer was required to ensure they were comprehensively insured to drive their own car, that it had a valid MOT certificate. In addition, the agreement placed restrictions on the Carer's use of drink and drugs, on the taking of photographs, and on the use of personal mobile phones during working hours.
48. The evidence of Ms Morgan was that the rate of £145 had been suggested by the Sixth Respondent as a market benchmark, but that the Claimant and the First Respondent were free to negotiate a different rate. It was common ground that the night rate and the Christmas triple time rate were requested by the Claimant and agreed by the First to Fifth Respondents. Ms Morgan's evidence was that as far as she knew no other carer introduced to a client by the Sixth Respondent had those terms.
49. The Claimant referred in her evidence to the terms of other agreements she entered into with other clients, in which the Sixth Respondent were a party to the agreement and were actively involved in setting the parameters of the engagement. That is of little assistance to me, as my focus is on the agreement and the relationship in this case.
50. After the Claimant had signed the contract, Ms Morgan sent the First Respondent an invoice for the introduction of the Claimant [R183]. Attached to the email was what was described as a “Contract Addendum” in respect of their contact [R189]. That provided that the client (the First Respondent) would pay a one-off, non-refundable introduction fee upon the commencement of care, save that there may be a partial refund if the client provide corroborated written evidence that the client had fully dissolved the carer's engagement contract in writing and that the carer was no longer in the engagement of or supplying services to the client up to the last day of the sixth calendar week of the engagement start date.
51. Also attached was a letter dated 6 April 2023 explaining that the introduction fee for introducing the Claimant was reduced to £4,000. The letter explained that if the contract with the Claimant was cancelled at any point before the end of the first six calendar weeks of the placement, the fee would be reduced to £609, and the balance would be refunded [R184].
52. The Claimant's evidence was that if she was genuinely a self-employed person, she should have been a party to any agreement between the First

Respondent and the Sixth Respondent, and that the six-week fee reduction period ought to have been discussed with her. She described the six week reduction period in her evidence as a “probation period”.

53. After the contract had been signed, on 13 April 2023 the Fourth Respondent checked the Claimant’s references [C900]. Ms Morgan emailed the Claimant to ask her for permission to share the Claimant’s certificates and DBS check with the Fourth Respondent by email, as there was an issue with the portal [R97]. The Claimant replied as follows [R99]:

“Yes of course let them understand though it on the update service! They have already contacted my reference! I thought this is what you did lol”

54. On 17 April 2023, the Claimant met the First Respondent and the Service User.

55. The placement commenced on 24 April 2023. On that morning, Ms Morgan emailed Ruth Kielty attaching a “best practice” document. The covering email said this:

“Your care with Sally starts soon.

You are engaging the self-employed carers services, not employing your carer which means that we are not the employer and neither are you as the client.

What are the next steps for you?

Please a think about writing down the following to guide your carer as to your requirements when they are on the assignment if you have not already done so in your interview/conversations/communications with your carer:”

56. The Third Respondent met the Claimant at the house early in her engagement. She asked the Claimant to pay the gardener in cash. She transferred £500 to the Claimant’s account to pay the gardener and for housekeeping expenses.

57. The Claimant attempted to use the Sixth Respondent’s portal to invoice for the services she provided, but had difficulty using it. She emailed Ms Morgan to ask for assistance. Ms Morgan explained that she would look into it, and advised the Claimant to send her invoices to the client directly and they would pay her directly. Thereafter, the Claimant sent invoices to the Third Respondent, and the Third Respondent paid the Claimant’s invoices by bank transfer (using the Service User’s funds). The Claimant was registered with HMRC as self-employed, and she submitted self-assessment returns to HMRC disclosing the income received and claiming for deductions for expenses such as car insurance.

58. On 2 May 2023, at the Claimant's request, she was added as either next of kin or carer for the Service User for medical purposes, meaning she could liaise with the NHS directly regarding appointments for the service user. The Claimant arranged appointments using her own mobile telephone and email address.
59. During the early part of the engagement, the Service User was formally diagnosed with dementia.
60. Within the first six weeks of the Claimant's engagement, Ms Morgan emailed twice to check up on her – the first was on 29 April 2023 [R195], and the second was on 17 May 2023 [R198].
61. On 29 May 2023, the Claimant informed the First Respondent that she would work up until the end of August and then take a four week break. That was somewhat longer than the twelve weeks set out in the contract. The Claimant's evidence was that she did that because it would be less disruptive for the Service User.
62. Neither of the two substitutes/tag carers the Claimant had originally identified would be available on the dates when the Claimant intended to take her break. During her conversation with the First Respondent, the Claimant suggested an alternative substitute who could not drive. After their conversation she sent a message to the First Respondent saying this [C1023]:

"Hi Jules

Have you chatted to family yet about incoming carer ? Not being a driver .(no car) Could you let me know so I can book her up please if all is well I will leave around 25/8 for 4 weeks

Thanks Sally x"

63. There was some discussion about that in the Sibling Group. Following this, on 30 May 2023, the Fourth Respondent messaged the Claimant explaining that a non-driver "might have been ok for a couple of weeks as previously discussed", but was "not ideal for this longer period". She explained that the family would make enquiries for an alternative.
64. On the same day, the Claimant left the Fourth Respondent a voice message in which she said this [C798]:

"Yeah, what it is, Ruth, I'm going away in September for a week, I'm going on a cruise and I need to have time, so instead of me going home and then going off again, I thought I'll carry on working right the way through.

Umm, most of the girls can drive, but they haven't got a car. That's the only problem I've got at the moment. So I'm willing to work if you're going to find someone.

I'm willing to work until the 1st of September and then I'll go off until the 1st of September, October. I'll go off for that four weeks then because I'll have done like 20 odd weeks by the time I leave, so I've gone over, well over you know, and then I don't have to go off until after Christmas or we'll make arrangements for Christmas, whatever, depending on what you're doing, so that was the plan now. So I'm amalgamating the two break really because I've worked a longer spell because of April, May, June, July, August, so it's four and a half months, I'll have worked by the time I finish you see. Otherwise I've got to go off after 12 and then I got to go off again then, and I don't really want to do that to her because I want to keep us settled, umm, and I thought that would work anyway.

So around about the 1st of September then, until the 1st of September to the 1st of October then. Um, yeah, that'll be fine. Okay.

65. The family located another carer to cover for the Claimant, Jacqui – one of the Service User's previous day carers. On 31 May 2023, the Fourth Respondent messaged the Claimant telling her that cover arrangements had been made

66. In July 2023, the service user informed the First Respondent that the Claimant had been using her laptop and that she was unhappy about it. The First Respondent logged into the service user's laptop and took photographs of the Google history of the websites the Claimant had been accessing [C802]. The Claimant's evidence was that she had used the laptop with the service user's permission, as she had left her own tablet at home.

67. On 29 August 2023, the Claimant emailed Ms Morgan as follows [R213]:

"I got a fine for crossing a junction. It was sent to my home address. But because I am still at [the Service User's] house and don't leave until Friday 1st Sept, they want proof that I am working away from home, as I had 14 days to answer it.

Can you just change the date on the contact up to Sept 1st for me so I can forward it to them? Please, I have spoken to them this morning. (only reason I went home last Friday was to drop a suitcase off and found it)

Much appreciated."

68. Ms Morgan responded as follows:

"Hi Sally, no problem, You are still in placement, so very happy to send you an agreement with amended dates, but you will need one of the Dawsons to counter-sign it

Can you let me know the email of the Dawson you want me to put on the contract and who I should send it to?

It will be a client and carer agreement between you and the Dawsons

Let me know the email and contact and Ill do that for you”

69. In the interim, the arrangement with Jacqui fell through, such that she was no longer willing to cover for the Claimant in September. On 15 August 2023, the First Respondent messaged the Claimant asking her for the details of someone else who could cover [C171]. The Claimant suggested a further alternative, Rose. The family made contact with her directly. That arrangement also fell through, as Rose was not willing to use her own vehicle to transport the service user. The Claimant then provided the details of a further carer, Georgina. The family made contact with Georgina directly. Three days before the Claimant’s break was due to begin, Georgina messaged the Claimant as follows:

“Sally. Apologies but when you called the other day I was in A&E I have spent last 2 days in ICU. I am not going to be able to get there as I have to put my family first. Sadly I cannot leave ICU at present time my sincere apologies. X”

70. The Claimant placed an advert for an alternative cover carer. Because she was due to go on holiday imminently, she gave the Second Respondent’s email address as the contact person on the advert. Ms Morgan of the Sixth Respondent saw the advert and emailed each of the First to Fifth Respondents saying that the Sixth Respondent could help finding cover. That email was not copied to the Claimant.

71. On 28 August 2023, a Carol Thompson emailed the Second Respondent to ask if the position was still available. The Second Respondent replied explaining that it was for one month, and asking Ms Thompson to send over a CV, which she did [C819]. Ms Thompson was subsequently engaged directly by the First Respondent to cover the Claimant’s break, on terms agreed with the Second Respondent (including a daily rate of £150 per day). She was paid by the Third Respondent.

72. The Second Respondent sent Ms Thompson a care plan the Claimant had prepared for the Service User. It set out the way the Claimant dealt with matters like medication, meals and activities. Under the heading “Breaks” it said this:

“2hr break to slot in when it suits you , no set time , if I have taken [the Service User] out for the day I will take longer the next day, (if we have a long day out planned I don’t go far the day before or after you might find she is tired , so I let her relax she is 92 after all . (When family visit you are free to go off while they are here they will come for the day with her ie 12 to 5 or 11 to 5. Family will always arrange in advance.”

73. Under the heading “Family” it said this:

“5 children all in 50, 60,70 non-interference, wassap group but just to tell them what you have been doing, so when they phone they can chat to her about things to keep conversation going .”

74. On 4 October 2023, after the Claimant's return, the Third Respondent had a conversation with Ms Thompson about payment for the work she had done. After that conversation she send the following message to the Sibling Group:

“Had a phone call from Carol as she wanted payment, so I have sorted everything out with her.

Very interesting conversation I had with her. She said how rude and disgusting Sally is and that she has had to block her number.

She thinks we should put a hidden camera in the house as Mum told her that she is scared of Sally and she shouts, prods, and pushes her. Mum broke down and cried one day when speaking about Sally and said she didn't want her to come back.

I know that Mum can be stubborn and doesn't always do what we would like her to do, and you need to be firm with her, but by the sounds of it, Sally is forceful.

I think we need to discuss the possibility of finding someone else?!”

75. The Third Respondent shared three voice messages which the Claimant had sent to Ms Thompson, and Ms Thompson had forwarded to her. The First to Fifth Respondents expressed some concern within the Sibling Group about the tone of those messages, and about the Claimant's approach. The Fifth Respondent noted that the service user had also raised concerns with him about the Claimant shouting, pushing, and putting her to bed at 7:30. He indicated that he would talk to the Claimant to discuss the concerns raised.

76. On 8 October 2023, the Fourth Respondent had a discussion with the Claimant about those concerns.

77. On 6, 7 and 8 November 2023, the Claimant conducted the final hearing in another Employment Tribunal case, via video. The Claimant's status was also an issue in that case.

78. On 30 November 2023, the Claimant wrote to the First to Fifth Respondents. She expressed some concern about the way she was being treated, and referred to attitudes having changed since returning to work in October 2023. She referred to the discussion on 8 October 2023 as having involved a “barrage of other accusations” which she found “completely out of order” [C277].

79. The Claimant planned to take a further break from 9 to 23 January 2024. On 16 November 2023 she messaged the Fourth Respondent as follows, attaching a copy of Lynne Lloyd's CV [R341]:

“Hi Ruth I will be going off 9th January to 23rd lynne one of my cover carers will take over from me . Mum will live her”

80. Ms Lloyd sent the Fourth Respondent copies of various documents including DBS certificate, motor insurance certificate, and carer's insurance certificate. On 25 November 2023, the Fourth Respondent sent a draft carer agreement to Ms Lloyd. She also messaged Ms Lloyd saying this [C272]:

“Hope this agreement is in line with what Sally discussed with you – please let me know that you are happy with the terms.

Please contact Carole with your bank details nearer the time. I am waiting for the email contact details for me to take up references – I think you said Beryl George and Sheila, in respect of your current position and last live in role .I'll set up the WhatsApp group for family and yourself nearer the time.”

81. Ms Lloyd agreed to the draft contract sent to her by the Fourth Respondent. She was paid directly by the Third Respondent. Unlike on the other occasions when the Claimant took a break, she had a 24 hour hand-over period with Ms Lloyd (in respect of which both the Claimant and Ms Lloyd were paid). The Claimant notified the Fourth Respondent of the 24 hour handover (but did not seek permission for it).

82. Ms Lloyd brought her dog to the Service User's property for the period during which she was providing care to the Service User. The Claimant was asked in cross-examination whether she had asked any of the First to Fifth Respondents whether Ms Lloyd could take the dog to the property. Her evidence was initially that she did not liaise with Ms Lloyd regarding he being hired. She was then taken to a transcript of a conversation she had with the First Respondent on 5 June 2024, which recorded her as saying this [C881]:

“So we brought her the dog. I thought, yeah, I said to Lynn because she was supposed to put her in and somebody's supposed to come look after. I said, well bring the dog.”

83. Her evidence was then that Ms Lloyd had had a video call with the Service User, who told her to bring the dog, and that the permission therefore came from the Service User herself.

84. On 29 January 2024, the Claimant raised the issue of her status with the Third Respondent [C1119]. She explained that she was concerned about being audited by HMRC. She said this, regarding what she viewed as the options going forward:

“If you had given me a chance to speak you might have understood it from my perspective , going forward you have options

1. Employee
- 2 . Managed agency

3.pay me cash

I cannot work only one job and not be an employee . Surely you must understand that Carole , I could end up in alot of trouble”

85. Somewhat surprisingly, the Claimant’s evidence was that the reference to being paid cash was because if she billed for three months at a time she could put that money in on the following year rather than banking it week-on-week. Her evidence was also that she wanted to see if she would be treated differently to the gardener, who was paid in cash.

86. The Third Respondent suggested that the Claimant speak to the Fifth Respondent. The Claimant and the Fifth Respondent had a conversation on the following day (30 January 2024). There was some dispute in the evidence regarding the contents of that conversation:

86.1. The Fifth Respondent’s evidence was that he said words to the effect of “cash would not be happening”. His evidence was that he explained to the Claimant that they could consider putting her onto a pay as you earn arrangement, but that that would require a change of contract and would lower her rate of income, which the Claimant said she would not agree to. The Claimant denied that version of events.

86.2. The Claimant’s evidence was that the Fifth Respondent told her that he would speak to his accountant, and he never reverted to her after that. The Fifth Respondent’s evidence was that he had told the Claimant that he would need to speak to his accountant, but his accountant was on a three month holiday to Australia at the time. His evidence was that in any event there was nothing to discuss with the accountant as the Claimant did not want to reduce her pay to move onto a pay as you earn arrangement.

I deal with this in my conclusions.

87. The Claimant planned to take a further break from 1 May 2024 to 1 June 2024. On 12 February 2024 she sent a message to the Fourth Respondent as follows [C1065]:

“Hi Ruth I am going off from 1st May to 31st May . Mandy [Colley] will cover me . Here is her CV and phone number”

88. The Claimant accepted in evidence that she had discussed the position with Ms Colley before passing her details to the Fourth Respondent. After the Claimant had sent that message to the Fourth Respondent, the family then contracted directly with Ms Colley, and paid her directly.

89. Also prior to her break, the Claimant discussed with Ms Colley the possibility of her moving to a pattern of six weeks on, one week off, with Ms Colley covering her for the weeks off. The Claimant then spoke to the Fifth Respondent about moving to that working pattern on 30 April 2024. The

Claimant's evidence was that during that conversation she also raised the possibility of having one day off per week.

90. During late April and May 2024, the First to Fifth Respondents discussed terminating the Claimant's engagement upon her return. The siblings agreed that they would terminate the Claimant's engagement on notice. They also discussed the possibility that the Claimant may in any event decide to give notice to terminate the engagement, as she had expressed to the Fifth Respondent that she was unhappy. During those discussions, in a voice message to the Second to Fifth Respondents, the First Respondent said this [C862]:

"I think Sally said, really, she is like the sixth child now."

91. The Claimant discussed her position with the Fifth Respondent on 5 June 2024. Following that conversation, the Claimant left her position with immediate effect.

92. That evening, she sent the following message to the S&M group [R328]:

"Dear all

As I now leave due to the the troubles caused today by yourself & mum .

I am telling you that all carers I used as part of my business as a self employed business, and whom I substituted my work put to as part of my business I ask you to refrain from using.

If it should come to my attention that any carer whom I substituted is used, you will be liable to pay me agency fees , of 1200 per week

Regards

Sally Jenkins."

93. The Claimant's evidence was that the message was written in her car while leaving the job (in essence, while feelings were running high). Her evidence was that she believed that First to Fifth Respondents had hired Ms Colley to replace her. Her evidence was that if she was genuinely in business on her own right, her substitutes would have been paid through her, and she would have signed a contract with the substitute to prevent them from poaching her client.

94. The Fifth Respondent replied as follows:

"Dear Sally.

I am surprised and disappointed that your reaction to me today requesting clarification on Mum's concerning reports was to immediately pack your belongings and leave.

This has left us with no option other to care for Mum between us in the short term until we are able to appointment a replacement carer. I wish you well.

Graham"

95. The Claimant replied as follows:

“You simply are a jobsworth , and its about time you did something to help your mum ONLY then will you truly see for yourself ,between you all you have continually moved the goal.posts and the way you approached this today was simply appalling, just before I left for my break scroll back I layer out the issues you self ignored them ,and have let you mum manipulate the situation, so this is brought on by your own doing,
you had an opportunity to talk yo me prior to returning and I could have made a decision not to return, prior to going off Graham when I stated I was unsure about returning you spent 1hr or more on the phone to me agreeing that mum eas manipulative Julie has said it , Ruth has said it carol has run away from it , you practically begged me to return yet EVERYTIME I have returned you ad a person who calls the least ! Has something to say, you all back seat drivers and you have not even so much as thanked me , I have done soooooooo much for your mum you truly are ungrateful people karams [sic] coming !

96. Across the arrangement as a whole, the Claimant relied in particular on the following messages in the S&M Group and direct messages with the First to Fifth Respondents as demonstrating what she regarded as control of her:

96.1. On 20 April 2023 at 7:47, the Fourth Respondent sent the following message:

“Good morning Sally, hope this finds you well.
I've received this notification regarding booster jab for Mum. If you could take her at some point soon that would be great.
Also I'm thinking she really needs a haircut and her nails done (so long she's struggling to get her hearing aids in) last time the carer took her to the Banstead Centre - mum has the details - got both appointments for the same day. You can get a lunch there too.
Thank you. X

The Claimant responded “Yes no problem x”

A little later the same morning, the Fourth Respondent sent the following message:

“Ohh, and a chiropodist at some point soon 😊- her big toe nail is very thick and raised - only noticed it last weekend when I helped her have a shower. Thank you”

96.2. On 29 April 2023, the Third Respondent messaged the Claimant as follows (regarding paying the gardener at the service user's house) [C1113]:

“What would you prefer? I can transfer the money and then you will have to draw the cash out or shall I leave it for Mum to withdraw the cash out?”

The Claimant replied as follows:

“I think it a step too far . She will want to keep it in her purse or hide it and won't remember send it to me it be easier thanks .”

The Third Respondent subsequently transferred £500 to the Claimant's bank account, to pay for the gardener and any other incidental expenses.

96.3. On 6 June 2023, the Second Respondent messaged the Claimant as follows:

Hello Sally,
Please look out for a P60 from Canada Life. It should have arrived by now but it was not amongst the paperwork I retrieved on Sunday”

The Claimant responded “OK will do”

96.4. On 27 June 2023, the Fourth Respondent sent the following message:

“I have received an email from the art and craft shop in Coulsdon. Some time ago I was in the shop with Mum choosing knitting patterns for baby matinee jackets. The shop also runs art classes, which had stopped due to Covid. As per the email received they are starting up again. Mum had expressed an interest in them. Please can you speak to her, and see if she wants to go, and book her onto the workshop if applicable, Thanks.”

96.5. On 10 August 2023, the Third Respondent messaged the Claimant as follows:

“Could you send me evidence of Mums Blue Badge? I'm going to try and get a grace period on paying ULEZ on my van. If Mum is receiving Attendance Allowance and holds a Blue Badge, TFL will consider the application.”

96.6. On 21 October 2023, the Fourth Respondent sent the following message:

“Hi Sally,

Mum has probably already mentioned that she didn't want any lunch, and so she didn't have the tablet you gave me, but which I forgot to return via Paul.

Says the meal portions are too large for her, and feels embarrassed to refuse or leave any - doesn't want to cause offence.

Perhaps smaller portions please - see how she goes.

Think she enjoyed the visit, which was just lazy, but she had plenty of interaction with Marley which pleased her.

The Claimant responded as follows:

"Hi Ruth

Your mum can leave what she doesn't want I'm not forcing her . And she eats it all so I'm not sure what she means . If she didn't want it she wouldn't eat it ."

96.7. On 30 November 2023, the Fifth Respondent sent the following message:

"How is the [Christmas] tree looking?

It's got to be regularly watered because the room is soooooo hot!"

The Claimant apparently took issue with the message, as she responded:

"Yes I think iam not stupid Graham!"

And then a little later:

"I am getting fed up with you all thinking I am stupid ! I run my own home I am 63 years of age I am not a child ."

The Fifth Respondent apologised. Within his apology he said this:

"Also, never feel we await an immediate response to a message as we can appreciate you should be taking time out for yourself or could be busy dealing with other things"

96.8. On 3 December 2023, the Second Respondent messaged the Claimant as follows:

"Hi Sally,

Mum was in very good form when I spoke to her this afternoon. It was the most normal telephone conversation with her for a long long time. It must be greatly helped by the stimulation you are providing her - well done.

I suggested to her that I visit next weekend 9/10 Dec. Do either day fit in with your plans?

The Claimant responded

“Hi Clive either one is OK let me know I am looking to go to winter wonderland but I am watching the weather and train strikes atm.”

Then on 7 December 2023, the Second Respondent messaged the Claimant as follows:

“Hi Sally,
Winter wonderland is sold out for most times on Saturday so seems to be a good day to visit if that is convenient.”

The Claimant replied as follows:

“Yes Saturday is good I will book WW at the right time with weather”

96.9. On 6 January 2024, the Third Respondent changed the icon of the S&M Group to a picture of the Claimant with the Service User. The photograph was one which the Claimant had sent to the group previously. In cross-examination, the Claimant put it to the Third Respondent that the picture had been added as the group icon without her permission. The Third Respondent accepted that was accurate, but noted that it was the Claimant herself who had first sent the photograph to the group.

96.10. On 27 February 2024, Second Respondent messaged the Claimant asking if the service user had received a letter regarding renewing her emergency plumbing insurance. A couple of days later he asked the Claimant to send a photo of the first one or two pages when the letter arrived. He later asked the Claimant to send the full (24 page) document.

96.11. Also on 27 February 2024, the Claimant messaged as the S&M Group as follows:

While your here the Internet is playing up , the alarm that she wears started playing up they called a few times it was doing funny things .

I moved the box to the hallway to be nearer the Internet bit it's intermittent. Shall I phone them ? Who are you with ?
Some account number if you got it ?

The Third Respondent replied providing the account details to the Claimant.

96.12. On 2 April 2024, the Third Respondent sent the Claimant the following message (having received a message from TalkTalk about a potential issue with the line at the service user's property):

"Morning Sally. I received a message from TalkTalk and was wondering whether you were still having problems with the internet".

96.13. It transpired that there was an issue with the internet. Openreach arranged for an engineer to visit the service user's property. The message with the proposed appointment time was sent to the Third Respondent as the contact name on the account. The Third Respondent had to reply to the message to confirm whether the appointment should go ahead at the time proposed. She forwarded the message from Openreach to the Claimant with the following covering message:

"Do you want me to confirm this appointment?"

97. I note that the provision of instructions was not a one-way street. By way of example:

97.1. On 1 May 2023, the Claimant sent a message to the S&M Group as follows:

"P.s Ruth don't mention hearing aids 2 days now no mention of them ! Possibly because I used revers psychology on her and said OK put your old ones back in then! She said oh no !"

97.2. On 29 November 2023 at 3.28pm, the Claimant sent a message to the S&M Group as follows:

"Hi jules
Hope you are OK after your op ? And all has gone well . Mum's a bit worried about you , could you give her a call just to let her know your alright please . Thanks x"

97.3. On 9 December 2023 at 10:45, the Claimant sent a message to the S&M Group as follows:

"Clive . The fireplace decoration has given up , could you have a look at it . I havnt told your mum she hasn't noticed ! I have put a new fuse in the extension lead that's it's plugged into . I have tried a new fuse in the lights itself but no good .
And the curtain , once you have mended the curtain just tell mum leave it to Sally, I don't have a problem with it and now nights are drawing in she is closing them by 4pm when I am on break sometimes and then it comes off thanks"

97.4. On 15 December 2023 at 5:43pm the Claimant sent a message to the S&M Group as follows:

“ Yeah was good carole . Carole can you phone your mum you have been on her mind . She has forgotten you met up with her and she is worried you are on your own for Xmas”

98. The message history showed that whenever any of the First to Fifth Respondents wanted to visit the Service User, they would ask the Claimant if their proposed time was suitable first. They would defer to any arrangements she had made.

99. The Claimant further relied in particular on the following messages in the Sibling Group as demonstrating what she described as control or monitoring of her, or of otherwise being inconsistent with self-employed status:

99.1. On 20 April 2023 at 19:15, the Third Respondent messaged as follows:

“With regards to the gardener, I have gone with the guy that came today - Simon. He works alone and charges £25 per hour. He is going to start on Tuesday and then every Sunday doing 3 hours. I can't remember what time he's coming but he is going to message me. Only problem is he wants paying in cash. So I'm going to have to get Sally to take her to the bank or cash machine.”

99.2. On 3 May 2023 at 13:26 the Third Respondent messaged as follows:

“I'm asking Sally for receipts so I can see what is being bought. So far this week, there have been supermarket purchases of nearly £200. I think this needs to be monitored as Mum won't remember what was bought. When one of us visits Mum, we need to obtain the receipts and have a quick scan of them.

I know Sally mentioned that she bought 2 weeks supply of pull up tena pants that I know are expensive but I still think it needs to be monitored or at least make Sally aware that it is being monitored. Mum could easily be persuaded to buy something that wasn't really necessary and then wouldn't remember.”

The Fourth Respondent responded:

“Yes, certainly needs monitoring, and £200 in one week does seem excessive.”

The evidence First Respondent's evidence was that the reference to monitoring was to spending being monitored rather than the Claimant being monitored.

99.3. On 17 October 2023, the Fourth Respondent messaged as follows:

“Thanks for speaking to both Mum and Sally re any physical abuse..... We will continue to monitor things based on feedback from both of them.”

99.4. On 8 December, the Fourth Respondent messaged as follows:

“Going back on the Sally Xmas gift issue, I'm of the opinion that we should give her a Christmas Box. I appreciate we are not strictly her 'employer' but reckon she views us as such. If you are of agreement, how much and what?”

100. The Claimant's overarching case was that she was monitored and controlled by the First to Fifth Respondents. The examples above were the ones within the various WhatsApp messages to which she took the witnesses in cross-examination, or otherwise drew my attention to. However her evidence did, at times, run contrary to that. In particular, her witness statement included the following:

100.1. “I was required to organise, manage and report on all aspects of [the Service User]'s care using my own resources, while remaining accountable to the Dawsons”.

100.2. The Claimant described having a “lack of hands-on support” from the First to Fifth Respondents.

100.3. “The Respondents did not directly observe my work on a day-to-day basis. On the occasions they attended the property, my interaction with them was minimal, as I would take my break to allow them time with [the Service User].”

100.4. “As a result, they [the First to Fifth Respondents] did not have firsthand knowledge of how I carried out my duties.”

101. The Claimant accepted in cross-examination that she was free to accept work for other clients, although her evidence was that there was no time for her to do so.

Law

Employment and worker status

102. An “employee” is defined by section 230(1) Employment Rights Act 1996 (ERA) as being “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 as meaning a contract of service or apprenticeship. Whether an individual works under a contract of service is determined according to various tests established by case law. A tribunal must consider relevant factors in considering whether someone is

an employee. An irreducible minimum to be an employee will involve control, mutuality of obligation and personal performance, but other relevant factors will also need to be considered. In the words of McKenna J in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433, QBD:

‘A contract of service exists if these three conditions are fulfilled. (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.’

103. A “worker” is defined by section 230(3) ERA as being: “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.”

104. In *Sejpal v Rodericks Dental Limited* [2022] EAT 91, HHJ Tayler noted that the Tribunal must adopt a structured approach in determining worker status, as follows:

“10. Accordingly, for an individual (A) to be a worker for another (B) pursuant to section 230(3)(b) ERA:

- a. A must have entered into or work under a contract (or possibly, in limited circumstances briefly discussed below, some similar agreement) with B; and
- b. A must have agreed to personally perform some work or services for B

11. However, A is excluded from being a worker if:

- a. A carries on a profession or business undertaking; and
- b. B is a client or customer of A's by virtue of the contract”

105. Employment contracts are an exception to the ordinary contractual principal that the ability of courts to look behind the written terms of a contract is limited to situations where there is a mistake that requires rectification or where the parties have a common intention to mislead (*Autoclenz v Belcher* [2011] ICR 1157, SC). Rather, the question for the Tribunal is “what was the true agreement between the parties?”. The written agreement is not even the starting point for determining employment status cases – the starting point is that status is a question of statutory interpretation rather than contractual interpretation (*Uber BV and ors v Aslam and ors* [2021] ICR 657).

106. No contract of employment (whether global, umbrella or otherwise) can exist in the absence of mutual obligations subsisting over the entire duration of the relevant periods (*Clark v Oxfordshire Health Authority* [1998] IRLR 125) CA
107. Personal service is a requirement for both employment status and worker status. The Court of Appeal in *Pimlico Plumbers Ltd v Smith* [2018] UKSC 29 approved the earlier dicta of the Employment Appeal Tribunal in the case of *James v Redcats (Brands) Ltd* [2007] ICR 1006 that it is helpful to assess whether personal service is the “dominant feature” of the contract.
108. A right to send a substitute to do the work has been held to be inconsistent with the obligation of personal service. In the judgment of the Court of Appeal in *Pimlico Plumbers* [2017] EWCA Civ 51, Sir Terence Etherton MR summarised the law as follows;
- “In the light of the cases and the language and objects of the relevant legislation, I would summarise as follows the applicable principles as to the requirement for personal performance. 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.”
109. While the case was appealed, the Supreme Court did not express any view on that aspect of the Court of Appeal’s judgment. In *Stuart Delivery Ltd v Augustine* [2021] EWCA Civ 1514, a different division of the Court of Appeal cautioned against trying to shoehorn the facts of a case into one of the examples given by Sir Terence Etherton MR.
110. The earlier case of *Halawi v WDFG UK Ltd (t/a World Duty Free)* [2014] EWCA Civ 1387 dealt with whether the claimant was an employee within the meaning of the Equality Act 2010. The claimant in that case, who contracted via a limited company, could change or withdraw from shifts and could send a substitute. Because she worked in an airside cosmetics store

in an airport, she could only send as a substitute someone who had store approval and an airside pass. She had to tell the Respondent the name of the substitute, but did not have to give reasons or seek approval. That was held by the Court of Appeal to be a genuine right of substitution, and to lead to the conclusion that the agreement was not one requiring personal service.

111. The EAT in the case of *Byrne Brothers (Formwork) Ltd v Baird* [2002] ICR 667 considered the reference in section 230(3)(b) to the party to the contract not being a client or customer of any profession or business undertaking carried on by the individual. Mr Recorder Underhill QC (as he then was) noted that it drew a distinction between workers whose degree of dependence is essentially the same as that of employees, and contractors who have a sufficiently arm's-length and independent position. At paragraph 17(5), he said this about the test:

“Drawing that distinction in any particular case will involve all or most of the same considerations as arise in drawing the distinction between a contract of service and a contract for services — but with the boundary pushed further in the putative worker's favour. It may, for example, be relevant to assess the degree of control exercised by the putative employer, the exclusivity of the engagement and its typical duration, the method of payment, what equipment the putative worker supplies, the level of risk undertaken etc. The basic effect of limb (b) is, so to speak, to lower the pass-mark, so that cases which failed to reach the mark necessary to qualify for protection as employees might nevertheless do so as workers.”

112. I was also referred by the Claimant to the case of *Chatfield-Roberts v Phillips & Universal Aunts Ltd* UKEAT/0049/18/LA. The judgment of the Employment Appeal Tribunal in that case rests heavily on the findings of fact of the Employment Tribunal. It does not establish that any live-in carer will automatically be either an employee or a worker. That remains a fact-sensitive decision.

Conclusions

The Sixth Respondent

113. The positions of the First to Fifth Respondents and the Sixth Respondent were distinct. I start with the Sixth Respondent.
114. There was no evidence before me that the Claimant had seen the Sixth Respondent's terms and conditions at that point that she registered, or at the point that she was placed to care for the Service User. That is surprising, given that the Sixth Respondent sought to rely on those terms.
115. The Claimant's evidence was that she had registered by emailing the Sixth Respondent rather than by signing up herself via the portal. That

evidence was not gainsaid. I do not consider that the Claimant can have been bound by a set of terms she had not seen. Without the terms having been drawn to her attention, I cannot see that she accepted them by conduct by continuing through the placement process with the Sixth Respondent.

116. I turn to consider the reality of the relationship. In that regard:

116.1. No money was ever paid by the Sixth Respondent to the Claimant. Not was the Sixth Respondent ever under any obligation to pay monies to the Claimant. Conversely, of course, no money was paid by the Claimant to access work via the Sixth Respondent's clients.

116.2. The Claimant never carried out any work for the Sixth Respondent directly, and was never under any obligation to do so.

116.3. The Claimant sought to suggest that the Sixth Respondent imposed control over the relationship with the remaining Respondents. I do not consider that that is right, for the following reasons:

116.3.1. While the Sixth Respondent suggested the basic rate of pay, I consider that that would be an entirely normal thing for the Sixth Respondent to do as an agency providing services to inexperienced lay clients. That was, in essence, part of the service that they provided. I can see nothing at all to suggest that either party was bound to accept that suggestion. And of course it was common ground that the Claimant negotiated some of the payment terms of her agreement with the First Respondent.

116.3.2. The same point applies to the draft terms that the Sixth Respondent provided for the use of the other parties. The correspondence to the parties made it abundantly clear that the Claimant and the First Respondent were under no obligation to use the Sixth Respondent's draft terms. Once again, it was a part of their offer to the First Respondent (and other clients) – providing a legally-drafted model contract to use was a part of the service for which they charged the fee that they did

116.3.3. The Claimant relied on the six week refund period, which she sought to characterise as a "probationary period" imposed upon her engagement. That description was wholly misconceived. The First Respondent was being expected to pay £4,000 for having the Claimant introduced to her. That left open the possibility that the Claimant could leave after a few days, or the First Respondent could find her unsuitable and dispense with her services, and the First Respondent would then be £4,000 out of pocket and still have no carer for the Service User. Self-evidently, the six week reduced fee period was to ensure that the First Respondent would get some value from the significant introduction fee paid. That was nothing to do with the relationship between the Claimant and the First

Respondent, and it was certainly not an indication of the Sixth Respondent controlling the relationship with any or all of the other Respondents.

117. Weighing all of that up, I conclude that the Claimant was neither an employee nor a worker of the Sixth Respondent at any time. None of the necessary elements for a contract of service existed.

The First to Fifth Respondents

118. The Claimant and the First Respondent entered into a contract on 6 April 2023. They were the only two parties to that contract.

119. I can see nothing at all to suggest or imply a contractual nexus with any of the Second to Fifth Respondents. I bear in mind that the Third Respondent made the payments to the Claimant (albeit using the Service User's funds), and each of the other Respondents interacted with the Claimant in various ways. I consider that the correct analysis is that they were acting as agents of the First Respondent when they did so.

120. The Claimant sought to suggest that she had no control over the terms of her contract with the First Respondent, and that she simply had to accept them if she wanted the job. I do not consider that that is right. The Claimant was able to negotiated triple time for Christmas and a night call fee.

121. Furthermore, this was not an *Autoclenz*-type case where there was a significant imbalance in bargaining power as between the Claimant and the First Respondent. In fact, if anything I consider that the Claimant had greater bargaining power than the First Respondent within their relationship. This is because:

121.1. The First Respondent was not a large employer – she was an individual, who along with her siblings was looking to engage a carer to look after their elderly mother.

121.2. The First to Fifth Respondents had limited experience of engaging carers, whereas the Claimant was an experienced carer with various contacts in the industry (of which they fact she was able to put forward a “tag team” at the start of the engagement was powerful evidence).

121.3. The First to Fifth Respondents were reliant on the Claimant. There were numerous references in the Sibling Group to the time that they had spent locating Claimant, and to the difficulties they had had in doing so. There were also references prior to the engagement starting to not wanting to lose the Claimant.

121.4. Once the agreement commenced, that reliance became even greater, for three reasons:

121.4.1. The First to Fifth Respondents all recognised, both in the S&M Group and the Sibling Group, that Claimant's care

had resulted in a marked improvement in their mother's wellbeing.

121.4.2. There were references in the Sibling Group to the amount of money that had been spent in securing the Claimant (in terms of the introduction fee to the Sixth Respondent), and to it only being good value for money if the arrangement remained in place for a considerable period of time.

121.4.3. It was apparent from the messages in the Sibling Group that the First to Fifth Respondents were aware that if the Claimant brought the agreement to an end then they would have to plug the gap until an alternative carer could be located, which would cause them considerable practical difficulty.

122. Of course I have reached that view in part with the benefit of seeing the messages in the Sibling Group. The Claimant had not seen them at the time; I accept that she may not have appreciated the power she held within the relationship. But she could not on any account have been said have held the weaker hand.

123. Bearing all of that in mind, I consider that the Claimant could plainly have negotiated other parts of the terms of her agreement with the First Respondent had she chosen to do so.

124. I turn next to consider the reality of the situation.

The views of the parties

125. The views of the parties are, of course, not in any sense determinative. I do consider, however, that the way the Claimant approached the relationship was consistent with it being one of self-employment. I say that for the following reasons:

125.1. The Claimant litigated another employment status case to final hearing in November 2023, but she did not at that point raise any status issues. She continued to act in a way that was consistent with self-employment. She did not suggest that she should be entitled, for example, to paid annual leave.

125.2. When the Claimant did raise her status, it was on the basis of tax status rather than statutory employment status. It is in my judgment telling that she offered, as one of the three options she put to the Third Respondent, to be paid in cash. I am not persuaded by her evidence that she wanted to see if she would be treated in the same way as the gardener – someone who visited for only a few hours every week. I consider that at the time her sole motivation was to minimise the risk of being treated as an employed earner for tax purposes and minimise her tax burden.

125.3. I prefer the evidence of the Fifth Respondent regarding the conversation on 30 January 2024. I find following their conversation there was nothing for the Fifth Respondent to discuss with his accountant. That is because he had made it clear that payment in cash was not acceptable to the First to Fifth Respondents, and the Claimant had made it clear that any reduction in her take-home pay, which the Fifth Respondent had indicated would be necessary in order for her to be put onto a pay as you earn arrangement, was not acceptable to her. That is consistent with the fact that the Claimant did not follow the matter up further. The Claimant is an articulate lady, and the totality of the evidence before me made it abundantly clear that she was not slow to follow matters up with the First to Fifth Respondents if she was unhappy. The reason she did not do so in that case was because she regarded the discussion about status as being closed.

125.4. I note also that Claimant tried to suggest that if the Respondents used Mandy Colley after her termination, they would need to pay her a finder's fee. There was absolutely no contractual basis for that at all. She described Mandy Colley as her "substitute".

126. I consider that the references within the Sibling Group to the Claimant being employed were reflective of loose or colloquial use of language rather than any considered view about her status. In reaching that conclusion I bear in mind that the First to Fifth Respondents were lay people, acting in their personal capacity. Those comments do not assist me either way in determining the Claimant's true status.

Personal service

127. The terms of the contract between the Claimant and the First Respondent provided for a conditional right of substitution. Those terms provided that the substitute would be provided by the Claimant, and would be paid by the Claimant. They further provided that:

127.1. The right to substitute was subject to the approval of the First Respondent, not to be unreasonably withheld.

127.2. The substitute would be required to enter into direct undertakings with the Client, including with regard to confidentiality

127.3. The Claimant would work for 12 weeks, with their substitute then working for two weeks.

128. The requirement for the Claimant to provide substitutes was clearly an important one for First to Fifth Respondents before the agreement commenced. Within the Sibling Group they expressed concern about how they would find a carer to cover the Claimant's time off (on the understanding that it would be a 12 weeks on, two weeks off arrangement). They also expressed concern about having to pay another agency fee to locate cover carers. The clear intention and understanding of the First to Fifth Respondents was that having engaged the Claimant and her "tag team", they would have year-round care for their mother as long as the

arrangement persisted (subject to both parties' right to give notice at any time).

129. It was made clear to the Claimant at the time that the agreement was entered into that there would not be a strict twelve on/two off arrangement, and it would be up to her how often she substituted her performance. That was plainly important to the Claimant from her correspondence with the Sixth Respondent.
130. In practice, there were three occasions when the Claimant took time away.
131. On the first occasion, in September 2023, she was unable to locate a substitute who was acceptable to the First to Fifth Respondents. The substitutes that she suggested either could not drive or did not have access to a car. I do not consider that it was unreasonable for the First Respondent to withhold consent for a non-driver to care for the Service User for four weeks. A significant part of looking after the Service User involved taking her out to appointments, shopping, and to events and activities that would enrich her life. It was the Claimant who had indicated (not requested) that she would take four weeks off rather than two. The family expressed that two weeks of a non-driver might be manageable, but four would not.
132. I consider that the First to Fifth Respondents acted reasonably by seeking to arrange for a carer to cover for the Claimant. In terms of the way the contract was worded, the First Respondent would have been well within her contractual rights simply to have told the Claimant "if you can't find a substitute, you must continue to work". But they did not do so – no doubt influenced by the fear of losing the Claimant altogether.
133. Even then, the Claimant provided a care plan for the substitute carer to use. The Claimant suggested in her evidence that the care plan was for her own use. Looking at the way it was worded, that simply cannot be right – it was plainly written for someone other than the Claimant.
134. On the other two occasions, the Claimant simply informed the family who the substitute would be, having made arrangements directly with them. Of course, the family paid the substitutes directly – they were not paid via the Claimant. But:
- 134.1. They were paid in the way that the Claimant had agreed with the substitutes.
- 134.2. The dates were what the Claimant had arranged with the substitute and presented as a *fait accompli* (and in respect of Ms Lloyd, she had arranged a 24 hour handover period, without discussing with the family first).
- 134.3. She had also authorised Ms Lloyd to bring her dog to the placement with her. Given that the Service User had dementia, and given that the Claimant's contract was with First Respondent, it is

surprising that she would have authorised Ms Lloyd to bring the dog without discussing with any of the First to Fifth Respondents.

135. Looking at the circumstances as a whole, I do not consider that the fact that the family paid the substitutes directly is decisive. The practical reality of the arrangement was that the Claimant could, and did, unilaterally inform the family that someone else of her choosing would be covering the work for a period of time that she had selected.

136. The First Respondent (and consequently the siblings generally) had the right to object to the nominated substitute. They exercised that right in practice. In the circumstances, however, I do not consider that that was inconsistent with a genuine right of substitution. The role involved providing unsupervised care to a vulnerable elderly adult. Given the nature of the work, the family would need to be satisfied that the substitute was appropriate, by for example checking DBS certificates and references. More broadly, they would need to be satisfied that the substitute was able to perform the role adequately. Driving was self-evidently an important component of the role. In my judgment, neither the way the right to object was worded in the agreement, nor the way it was operated in practice, was inconsistent with a genuine (albeit not unfettered) right of substitution.

137. Bearing that in mind, I do not consider that it could be said that the dominant feature of the agreement was personal service, because:

137.1. The agreement as drafted and as understood by the parties was that the Claimant together with her tag team would provide year-round care; the First to Fifth Respondents would not be required to source any other carers while the agreement persisted.

137.2. The Claimant could (and did) take time off whenever she chose, as long as she nominated an acceptable substitute. She was not required to seek permission. She could take time off for any reason (and could in reality have taken time off if a more lucrative short-term vacancy had arisen). The length and frequency of the time that she took off was entirely within her control.

137.3. The fact that on one occasion the First to Fifth Respondents located an alternative carer to cover for the Claimant, so that she could continue to time off at a time of her choosing despite her being unable to locate a suitable substitute, does not in my judgment undermine that.

138. I therefore conclude that the Claimant was not obliged to personally perform the work. It follows that she could not have been either an employee or a worker of the First Respondent, since personal service is a requirement for either employee or worker status.

Control

139. I have nonetheless considered whether the First Respondent (and through her, the Second to Fifth Respondents) exercise control over the

way in which the Claimant carried out her work. In considering the question of control, it is important to bear in mind the background. The Claimant was engaged to act as a live-in carer for the Service User. She would therefore be living in the Service User's house, and acting effectively as housekeeper.

140. I have carefully considered the various examples that the Claimant drew to my attention as demonstrating her work being controlled. In my judgment none of them demonstrate, either individually or collectively, control or supervision being exercised over the Claimant. I reach that conclusion for the following reasons:

140.1. The Claimant had an overarching role to carry out, as set out in the contract. But she was not given detailed instructions on how to carry it out. It was left to her own professional judgment. It was open to her to structure her day (and the Service User's day) as she saw fit.

140.2. Insofar as the First to Fifth Respondents asked her to carry out particular tasks, they were entirely minor matters which did not impinge in a significant way on the way the Claimant carried out her core duties – for example, to look out for and scan a particular piece of post, or discuss with the Service User if she wished to take part in craft activities. Most could better be characterised as requests or suggestions rather than instructions. And on some of the occasions the Claimant relied upon, the message exchanges showed that the Claimant proved resistant to those suggestions. The clearest example of that was when the Fourth Respondent suggested reducing the size of the Service User's portions. The way the Claimant responded to that request was wholly incompatible with the way that an employee would be expected to respond to a representative of their employer.

140.3. If those were the best examples the Claimant had of her work being controlled by the First to Fifth Respondents, that is in my judgment powerful evidence that little to no day-to-day control was being exercised over her. And of course the Claimant herself made similar requests or instructions back to the Respondents – for example, asking the Third Respondent to telephone the Service User.

140.4. Furthermore, when the First to Fifth Respondents wanted to visit the Service User, they would ask the Claimant if the proposed time was convenient. That is not consistent with them imposing control on her; quite the opposite.

140.5. Finally, the Claimant's own evidence was internally contradictory, in that she referred to being left entirely to her own devices, and to the First to Fifth Respondents having little knowledge of how she carried out her duties.

141. The Claimant also referred to being monitored. My attention was drawn to the use of the word "monitored" on two separate occasions in the Sibling Group:

- 141.1. The first was in relation to spending. Two of the Respondents had a Power of Attorney for financial affairs in respect of the Service User. The Claimant was, as part of her role, spending the Service User's money or facilitating the Service User herself spending it (by taking her shopping). The Claimant was also given a significant float of petty cash by the Third Respondent. In my judgment, it is entirely proper that the First to Fifth Respondents would want to keep a broad track of what was being spent. That is not the same thing as monitoring the way the Claimant carried out her duties.
- 141.2. The second occasion was after concerns had been raised about the Claimant's treatment of the Service User. Those concerns were raised by the Service User herself, and by Carole Thompson, who had cared for the Service User during September 2023. I should say first that it is entirely understandable that the First to Fifth Respondents would take that matter seriously and want to look into it. To do otherwise would have been neglectful in the extreme – particularly when the concerns were being raised not merely by the Service User herself, but by another experienced carer who had been caring for the Service User. In that context, I do not consider that the reference to monitoring the situation implies a monitoring of the way the Claimant was carrying out her duties; rather, it was monitoring the relationship between the Claimant and the Service User, and being alert to any safeguarding concerns.
- 141.3. Once again, more broadly, the Claimant's evidence was internally inconsistent. Her evidence was that whenever First to Fifth Respondents came to visit, she would leave after a few minutes. The only real insight that First to Fifth Respondents had into what the Claimant was doing with the service user on a day-to-day basis was therefore the information that the Claimant herself provide via the S&M Group. The Claimant was not obliged to provide information in that way; what she provided was within her own control. Again, that is not consistent with her being monitored.
142. It is also telling, in my judgment, that the Claimant was able to litigate a three day final hearing in the Employment Tribunal during the time she was caring for the Service User. That is entirely inconsistent with the First to the Fifth Respondents exercising control over the way she carried out her activities in the way that an employee's work would be controlled. On those days she was plainly able to arrange her activities in such a way as to be able to attend a video hearing during the entirety of the sitting day.
143. The Claimant referred to being integrated into the family. I do not consider that that is analogous to being integrated into an employer. The role necessarily involved some personal relationships. But that does not assist me in considering Claimant's employment status.
144. The Claimant also referred to what she described as a discrepancy between the way the job was originally advertised (as a "companionship" role) and what was actually required, as a carer for a lady who was subsequently diagnosed with dementia. She suggested that that

demonstrated the First to Fifth Respondents controlling the relationship. I do not consider that that takes me further forward. Firstly, of course, it was always clear the role was a carer rather than merely a companion, although the advert did refer to companionship. The duties were expressly set out in the contract, which the Claimant signed over two weeks before the engagement commenced. But more importantly, if the Claimant was dissatisfied, or considered that the role was not what she had signed up for, she could simply have given a week's notice and left. She did not do so.

145. I therefore conclude that the First Respondent (and through her, the Second to Fifth Respondents) did not exercise control over the Claimant in a way which was consistent with her being an employee. So I would in any event have concluded that the Claimant was not an employee on that basis.

Own business

146. I would also in any event have concluded that the Claimant was not a worker, because she was in substance operating her own business undertaking of which the First Respondent was a client. I reach that conclusion for the following reasons:

- 146.1. The Claimant invoiced for the work she did.
- 146.2. She was required to, and did, hold carers insurance.
- 146.3. The Claimant used her own vehicle, her own mobile phone, and her own email address to arrange appointments and activities for the Service User.
- 146.4. As set out above, very little control was exercised over the way that the Claimant carried out her activities.
- 146.5. The Claimant managed her own time to a significant degree, as outlined above. That is evidenced, not in the least, by the fact that she was able to conduct a final hearing in the Employment Tribunal while carrying out the services for the First Respondent.
- 146.6. As described above, the Claimant was able to unilaterally take time away whenever she chose, and for as long as she chose, provided she located a suitable substitute.
- 146.7. There was nothing to stop the Claimant taking on other work for other clients during her time away from caring for the Service User.

147. So for all of those reasons, I have found that the Claimant was not either an employee or a worker of any of the Respondents at any time. It follows therefore that the Tribunal has no jurisdiction to consider her claim, and it is dismissed.

Approved by:

Employment Judge Leith

Date: 27 July 2026

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