



EMPLOYMENT TRIBUNALS

Claimants: Ying Pang
Vivian Opoku
Gifty Aberima
Afia Anokyewaa

Respondent: Mrs L Todd (deceased)

Heard at: Watford Employment Tribunal

On: 28 and 29 July 2026

Before: Employment Judge Harrison

Representation

For the 1st claimant: Mr Austin, Counsel

For the 2nd-4th claimant: Mr Tawiah, Counsel

For the respondent: Unrepresented

JUDGMENT was sent to the parties on 11 August 2026. Full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024 on 5 August 2026, that request being sent to the Judge on 14 August 2026. Written full reasons are therefore provided:

REASONS

Introduction, claims, procedure and evidence

1. This claim was heard before me at Watford Tribunal in person on 28 and 29 July 2026. It relates to the employment of the 4 claimants who worked as personal care assistants for AB (deceased).
2. At the start of the hearing I confirmed with Counsel that the claimants pursued the following claims:

- a. Mrs Pang and Ms Opoku brought claims under section 38 Employment Act 2022 for a failure to be provided statements of employment as required under s1 ERA.
 - b. All the claimants pursued claims in relation to deductions from wages of pay (including holiday pay) under s13 ERA from around March 2024 until their employment ended.
 - c. All the claimants brought claims in the alternative to those listed at 2(b) as claims for a breach of contract arising on the termination of their employment under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
 - d. Mrs Pang brought a claim for unfair dismissal under case reference 3307987/2025 which had been consolidated with the main proceedings at a preliminary hearing.
3. Two interpreters, Mr Au and Mr Boateng were present and assisted the claimants (and therefore the Tribunal) both in simultaneous translation and by interpretation. Both interpreters took interpreter affirmations at the start of the first day.
4. I was provided with a bundle of documents running to 494 pages. Where relevant I have referred to pages from the bundle.
5. Each of the claimants gave an affirmation to support the veracity and current correctness of their written witness statement.
6. Before starting to hear the case, I had a lengthy discussion with the parties' Counsel and dealt with several preliminary issues which I summarise briefly here:

Correct respondent

7. On 21 May 2026 the respondent's daughter was appointed as an appropriate person to represent the interests of the respondent following the respondent's death. The respondent's daughter, Faye Todd was added as a Second Respondent. Faye Todd has not appeared at this hearing. She has objected to this appointment and in emails to the tribunal of 3 June 2026 and 28 July 2026 asked for it to be reconsidered for the reasons she explained. Having considered the position I told the parties prior to starting consideration of the case that I would order that Faye Todd be removed as an appropriate person. The case would therefore continue against the original First Respondent now the only respondent, Mrs L Todd (deceased). Notwithstanding this decision, Mrs Faye Todd is, as I understand it, the deceased respondent's next of kin. In the absence of any other known next of kin all judgments, orders or other

correspondence of the Tribunal in this matter are to be copied to her unless this order is varied.

Effect of s206 ERA

8. Part II of ERA which includes s13 ERA is not included in the list of matters set out in s206 ERA which deals with situations where an employer has died. I considered what effect this has on these claims if any. I looked at s1 Law Reform (Miscellaneous Provisions) Act 1934 and heard submissions from Counsel on the point. I was directed to **Lewisham and Guys Mental Health NHS Trust v Andrews 2000 ICR 707, CA**, and having considered the position was satisfied that s206 does not exclude the continuation of claims under Part II ERA but deals with representation. I therefore continued and heard the Wages Act claims.

Effect of Article 10 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994

9. Given the size of the claims being pursued by Mrs Pang and Ms Anokyewaa I raised with Counsel the effect of this Article to ensure that they were aware of its effect, which they confirmed that they were.
10. Later in the hearing Counsel informed me that all four claimants wanted their claims under this head to be dismissed upon withdrawal.

Privacy

11. I considered whether it was appropriate to maintain the Order made on 6 November 2024 under the then Rule 50 Employment Tribunal Rules of Procedure 2013 (the **Privacy Order**). Since that time the respondent has sadly died, and I do not need to refer to the background to her circumstances in anything other than a generalised way. I heard submissions from Counsel who strongly supported lifting the Order in support of the general principle of open justice. I also took account of the fact that there was no representative to explain the respondent's position. Having weighed up these considerations I have decided to lift the limited Privacy Order such that the respondent can be referred to as Mrs L Todd.

Absence of representation of the respondent

12. Given that Faye Todd is no longer appointed to be an appropriate person there was no representation for the respondent at this hearing. I considered how to proceed under Rule 47 of the Employment Tribunal Rules of Procedure 2024

(the **Rules**). I considered the emails sent to the tribunal by Faye Todd (including in response to an enquiry about her attendance on the first day of this hearing) and by the respondent's previous representative; the position of the claimants who have been pursuing claims for payment for work done for over 2 years; and the overriding objective. Having done so I decided that the balance of justice was served by proceeding with the hearing.

Case 3307987/2025 (the **Unfair dismissal claim**)

13. It appeared to me that I could not properly consider Mrs Pang's Unfair dismissal claim as this has not been properly served. It was only served on the deceased respondent at her home address after her death. I therefore ordered that (save as described in paragraph 15 below in relation to paragraphs 12,13 and 19 of the Unfair dismissal claim) case 33078987/2025 be separated from these claims. I have made separate Case Management Orders in respect of that case.

Amendment of Mrs Pang's claim

14. Mrs Pang has previously applied to amend her claim to include claims arising during the period after she filed her claim in these proceedings until her employment ended. She subsequently filed the Unfair dismissal claim to protect her position in relation to claims arising during this period.

15. To the extent it was required for me to do so I have allowed an amendment to Mrs Pang's claim in these proceedings to include the matters pleaded at paragraphs 12, 13 and 19 of the Unfair dismissal claim i.e. claims under s38 Employment Act 2002 and s13 ERA only. Mrs Pang was ordered to produce an updated schedule of loss to cover this period which her Counsel duly provided.

Facts

16. This is a claim brought by four personal assistants who worked for the respondent as personal carers for many years until April (or for Mrs Pang) September 2025. This is not in dispute.

17. The respondent was in receipt of a personal healthcare budget (**PHB**). The facts about this PHB were found and recorded in the Judgment of Judge Coll at a hearing held on 16 April 2025 (p136-140, paragraphs13–35 in particular). The original Second Respondent was the responsible commissioner for the respondent's PHB funding.

18. From around March 2024 the way in which the use of the PHB was managed changed. The respondent was no longer permitted to employ her own personal assistants, different arrangements were proposed by the original Second

Respondent. It does not seem that there was a refusal to continue to pay for the respondent's care however the funder and the respondent did not reach an agreement about how this would continue in practice. This lack of resolution has been the backdrop to the present claims. Within the tribunal file I see records that various of my colleagues have encouraged the parties to work cooperatively or individually to address the issue with the PHB funder.

19. Notwithstanding the changes to the PHB funding processes, the claimants continued to work for the respondent although their salaries were not paid.
20. As a matter of fact, Judge Coll made a finding on 16 April 2025 that all the documents pointed to the respondent being the employer of the claimants.
21. I share her conclusion on this. There is no doubt that at all relevant times the respondent's daughter managed matters for the respondent, however she was not their employer and the claimant's do not and have not suggested that she was. Mr Austin expressly said he was not making a case that she was the agent of the respondent.
22. The employer of the claimants was the respondent, this is what is submitted by the claimants' Counsel and it is reflected in the fact that the PHB was hers, and in contemporaneous contracts of employment and payroll forms in the bundle (pages 183, 185, 209, 210, 241-246 for example).
23. I accept the contents of paragraph 10 of the ET3 (p68) which explains how contracts of employment between the respondent and Ms Aberima and Ms Anokyewaa came to be signed on the express advice of the original Second Respondent, i.e. the PHB funder, and on documentation that the original Second Respondent provided.
24. Each claimant continued to work after their pay was withheld and completed time sheets which they gave to the respondent's daughter to sign off, which she did. They were sent to, and processed by, a payroll company and pay slips were issued for each month which describe exactly the sums earned by each claimant during the relevant period (pages 285-400). I accept the veracity of the contemporaneous timesheets and the payslips.
25. I accept the evidence of the claimants that they believed, based on what they were told by the respondent's daughter, that they would be paid in due course and so they continued to work for the respondent. They thought that they remained employed by the respondent. They did.

26. I have seen no evidence that any claimant agreed to a deduction of the entirety of their wages in the way that occurred and I find that they did not authorise the deductions.

27. Neither Mrs Pang nor Ms Opoku had a s1 statement of employment issued to them. These were issued to Ms Aberima and Ms Anokyewaa. During her evidence Mrs Pang did say that she had a contract. However, following Ms Opoku's evidence on the same point I am satisfied that Mrs Pang used the word contract to describe her payroll form (p243) not a full statement of terms.

Law

S1 Statement of particulars

28. The relevant legislation is found in the Employment Act (EA) 2002 at section 38 as follows:

38 Failure to give statement of employment particulars etc.

- (1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

.....

- (3) If in the case of proceedings to which this section applies—
- (a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or.....,
- the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
- (4) In subsections (2) and (3)—
- (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.
- (6) The amount of a week's pay of a worker shall—

- (a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and
 - (b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).
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- (7) For the purposes of Chapter 2 of Part 14 of the Employment Rights Act 1996 as applied by subsection (6), the calculation date shall be taken to be—
- (a) if the worker was employed by the employer on the date the proceedings were begun, that date, and
 - (b) if he was not, in the case of an employee, the effective date of termination as defined by section 97 of that Act or in the case of all other workers the date on which the termination takes effect.

Deductions from wages

29. The relevant law appears in s230 and ss13 and 23 ERA as follows:

230 Employees, workers etc.

- (1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
- (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

.....

- (4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

13 Right not to suffer unauthorised deductions.

- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

.....

23 Complaints to employment tribunals.

- (1) A worker may present a complaint to an employment tribunal—
 - (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

.....

- (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
 - (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

.....

- (3) Where a complaint is brought under this section in respect of—
 - (a) a series of deductions or payments,

....

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

Conclusions

30. I conclude based on the facts I have found, and as found previously by Judge Coll, that the claimants were employees of the respondent within the meaning of s230 ERA. The original Second Respondent had assisted the respondent to make these arrangements and for two of the claimants had provided her with documents to enable these contracts to be put in place.

31. The claimants all worked for the respondent and were paid amounts approved on behalf of the respondent by her daughter, from the respondent's PHB, until payments stopped in 2024. Ms Aberima and Ms Anokyewaa had express contracts of employment that set out their terms and Mrs Pang and Ms Opoku worked for the respondent as her personal assistants, as reflected in the timesheets completed and payslips produced and given to the claimants.

32. The claimants ceased to be paid in around April 2024. They then suffered a series of regular deductions of the entirety of their pay until they presented their

claims (which they did in time). All the sums deducted fall within s13 ERA and were a series of deductions for the purposes of s23(3).

33. Mrs Pang and Ms Opoku were not provided with a s1 statement of terms. The respondent is therefore in breach of s38 EA 2002.

34. In deciding what remedy to award in respect of this breach I considered the submissions of Counsel on the justice and equity of making an award where the lack of a contract clarifying the identity of the employer has, for Mrs Pang and Ms Opoku, had a practical, negative impact on them in pursuing these claims, and required a preliminary hearing. I also considered that the respondent's daughter was able to manage matters for her and did issue Ms Aberima and Ms Anokyewaa with a s1 statement. On the other hand I have considered whether exceptional circumstances apply under s38(5) given that the respondent was not able to manage the arrangements herself. Having weighed up the arguments on both sides I have decided it is just and equitable to make an award to each of Mrs Pang and Ms Opoku of two weeks' pay.

Approved by

Employment Judge Harrison

4 September 2026

SENT TO THE PARTIES ON

8 September 2026

FOR THE TRIBUNAL OFFICE

Notes

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

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