



EMPLOYMENT TRIBUNALS (SCOTLAND)

**Case Nos: 4104422/2025
Preliminary hearing
Held on Cloud Video Platform
on 28 August 2026**

Employment Judge A Jones

Ms A Hewitson

**Claimant
Represented by:
Mr B Hewitson (father)**

ELOSCN

**Respondent
Represented by:
Mr A Bourke, consultant**

JUDGMENT

1. The respondent did not pay to the claimant the notice pay to which she was entitled and the respondent is ordered to pay to the claimant a further four weeks' notice pay amounting to £906 gross.
2. The claimant was not engaged by the respondent as a common law apprentice and the respondent was entitled to terminate the claimant's contract of employment.

SUMMARY REASONS

Introduction

1. The claimant lodged a claim on 28 December 2025 complaining of breach of contract. The claim stated that there was a "failure to pay 1 month's contract notice and breach of contract as stated was apprentice and common law apprenticeships should make dismissing claimant a breach of contract on the employers part as the reason given for dismissal is not something that could not be trained."
2. The case has had a long procedural history including parties writing to each other in lengthy and occasionally ill-tempered communications. Parties were ordered to

exchange and lodge with the Tribunal a joint bundle of documents and submissions at least 14 days prior to this hearing. While written submissions were lodged by the claimant on 5 August, written submissions were not received from the respondent until the day before this hearing and no joint bundle of documents was lodged. A copy of the claimant's contract of employment with the respondent was provided to me during the course of the hearing.

3. At a hearing on 30 April, this hearing was listed to determine the following issues:
 - i. What notice pay the claimant was entitled to receive on termination of her employment, and
 - ii. Whether the respondent's actions in terminating the claimant's employment were unlawful at common law on the basis that she was engaged as an apprentice.
4. Parties were invited to comment orally at this hearing on the submissions made by the other party. Mr Hewiston expressed a concern that the respondent had altered its position in submissions and that it should not be allowed to do so at this late stage. I did not accept that the respondent had altered its position in such a way as to require any amendment to its grounds of resistance. The respondent has always adopted the position that the claimant was not engaged as an apprentice at common law. While the position in submissions was that the claimant was not engaged as a Modern Apprentice as she had not yet registered for training, that was an alternative position which the respondent was entitled to adopt at this hearing. The respondent's position has always been that the claimant was not an apprentice at common law and that the Modern Apprenticeship scheme which the respondent took part in was different and allowed termination of employment under the terms of a contract. There was no dispute between the parties that the claimant had not registered for any training at a college or other establishment and that this was something which was anticipated would happen at an early stage of her employment. Therefore, while the respondent could have highlighted this argument at an earlier stage, I did not form the view that it was precluded from making such an argument at this hearing. There was no prejudice to the claimant in the making of this argument, such that it could have countered the argument had further notice been given that it was to be made.
5. On the basis of the information available, the Tribunal made the following findings in fact.

Findings in fact

6. The claimant was employed by the respondent for a period of around 8 weeks. The claimant was 17 years old during the period of her employment. She was

paid an hourly rate of pay of £7.55 which was equivalent to the national minimum wage applicable at the time and that of the apprentice rate.

7. The respondent provides childcare services in breakfast and after-schools clubs.
8. The claimant's job title was "Apprentice play practitioner".
9. The claimant's contract of employment stated that she would normally work 30 hours per week.
10. It was intended that the claimant would work 26 hours a week with the respondent and attend college for 4 hours a week. However, the claimant did not ever attend college or register for a college course. No application for funding for training was ever made by or on behalf of the claimant.
11. The claimant was dismissed on 5 October 2025. She was paid a week's pay in lieu of notice.
12. The claimant's contract of employment provided that if she was dismissed having been employed for more than a month, but less than two years, she was entitled to one month's notice. However, there was also an additional provision which stated "*The period of notice may be reduced by mutual agreement. The Employer may at its discretion require that you remain available for work but that you do not attend at your workplace or to provide you with alternative work during your notice period. Should it be necessary to do so, your notice shall be deemed as whatever contractual notice shall be in place at the time of your dismissal plus one week, unless dismissal occurs for reasons pertaining to Gross Misconduct.*"
13. There were no other agreements in place in writing or otherwise in relation to the basis of the claimant's employment or any training she might undergo as part of that employment.

Employment status

14. The first issue to be determined is whether the claimant was an employee or an apprentice such that the respondent was not permitted the claimant's employment in the way in which it did.
15. The claimant's position was that the claimant was employed as a common law apprentice. The respondent's position is that the claimant was intended to be employed under the Modern Apprenticeship arrangements but that she was dismissed during her probationary period prior to her commencing any training.
16. The claimant referred to a number of authorities in submissions. Two of those were Employment Tribunal cases from Scotland and the remaining were cases from England. The claimant also made reference to **Dunk v George Waller & Son Ltd [1970] 2 All ER 630**.

17. The claimant relied heavily on **Flett v Matheson [2006] ICR 673**. All of the cases referred to turned on their own facts. Indeed, in **Flett**, the matter was remitted to the Tribunal for further fact finding in relation to the rate of pay, interaction between various apprenticeship schemes and individual learning plans and the factual matrix in which the claimant in that case came to be employed.
18. In the present case there was no dispute on the facts other than in relation to whether or not the claimant was regularly late for work and whose responsibility it was for an application for funding for training to be made. The Tribunal did not find these issues to be material.
19. The claimant had not commenced any training at college or on a self-directed basis at the time of her dismissal. She was not registered for any training and therefore it was not possible to determine how long any course on which she was registered would last or how that would interact with her employment duties. The only reference to training in her contract was training provided by the respondent.
20. The claimant was paid the national minimum wage for her age which was applicable at that time, although that amount was the same as that for apprentices in their first year if under 19 years of age.
21. The only written agreement between the parties was the claimant's contract of employment, which was for an indefinite period and subject to termination on notice (or without notice in the event of gross misconduct).
22. The claimant's job title made reference to 'apprentice'.
23. Taking all these facts into account, it appeared to the Tribunal that the claimant was employed under a contract of employment with the respondent. It was intended that this would operate under the Modern Apprenticeship arrangements, but that did not ever materialise as the claimant was dismissed before any arrangements with training providers or applications for funding for training or employment could be made. Therefore, at the point at which the claimant was dismissed she was not an apprentice at common law, but an employee employed under a contract of employment. In those circumstances the respondent was entitled to terminate the claimant's employment in accordance with the terms of that contract of employment. While the position may have been different at some point in the future, it is not for the Tribunal to speculate as to what training arrangements would have been made and whether this would have converted the relationship to one of apprenticeship whether at common law or otherwise. The issue for determination by the Tribunal is what the employment status was of the claimant at the point at which she was dismissed and whether that dismissal was in breach of contract at common law. The Tribunal concluded that the respondent

was entitled to terminate the claimant's employment in terms of the contract of employment agreed between them.

Notice pay

24. The claimant's contract of employment provided that she was entitled to one month's notice of termination of employment. There was then a curious provision which indicated that her notice could be deemed to be contractual notice plus one week. The respondent's position was that the claimant was entitled to one month's notice but that they accepted that there was some ambiguity and that they would be willing to pay an extra week's pay if that was a resolution to the matter. The claimant's position was that she was entitled to a further four weeks' pay on the basis that she had been paid for a week and was entitled to a further four weeks' notice.
25. The claimant was paid one week's pay in lieu of notice. The Tribunal concluded that the ambiguity in the contract should be interpreted in favour of the claimant. While the provisions were not clear, it did appear that there was a provision stating that notice would be one week more than contractual notice. Therefore, the respondent is ordered to pay to the claimant notice pay of four weeks' pay, at £7.55 per hour, on the basis of a 30-hour week, which is a total of £906 gross.

Date sent to parties07 September 2026