EMPLOYMENT TRIBUNALS

Claimant: **Miss H Bailey**

Respondent: **DSE Solutions Limited**

Heard at: **By CVP** On: 2 September 2026
Before: **Employment Judge** JM Wade

Appearances
For the claimant: In person
For the respondent: Mr S Revington, director

RESERVED JUDGMENT

The claimant's claims for notice pay, arrears of pay and holiday pay are dismissed.

REASONS

1. The claim said this:

"I was employed by DSE Solutions Ltd as "Managing Director" from 1st January 2024 until my employment ended on 30th September 2025. My title was managerial only. I was a PAYE employee, not a statutory director, held no shares and had no involvement in the company's financial management or decision-making.

I worked my contracted hours throughout September. However, my September 2025 wages were not paid. When my employment ended on 30th September 2025, they also failed to pay my accrued but untaken holiday pay and my notice pay, both of which I am legally entitled to.

I raised the non-payment with the company's director (Simon Revington) but no payment was made.

I participated in ACAS Early Conciliation and received a certificate to persue this claim.

I am therefore bringing a claim for unpaid wages (September 2025), holiday pay, and notice pay owed to me under my contract of employment and UK employment law."

2. The response said:

The claimant, Helen Bailey, was employed as Managing Director of DSE Solutions Ltd from January 2024 to September 2025. She was appointed after I stepped back from the day-to-day running of the business due to ill health. Although she had no prior experience in the occupational health or ergonomics sectors, she received full training and was responsible for the daily operation of the business.During July and August 2025, the claimant was informed that sales had fallen significantly and that, unless revenue increased, DSE Solutions Ltd was at risk of insolvency. The claimant was fully aware that the company might not be able to continue trading or meet future wage obligations.When it became clear that the business could not continue trading, the claimant expressed a wish to continue operating independently. On 2 September 2025, she incorporated her own limited company (DSE Office Ergonomics Ltd, company number 16690084). Shortly afterwards, she entered into a Transfer of Assets Agreement in which she, through her new company, acquired the goodwill, 15 years of client relationships, the e-commerce website, domain names, email addresses, branding and social media accounts of DSE Solutions Ltd. This agreement was completed voluntarily and with full knowledge of the company's financial position.By establishing her own company and acquiring the assets of DSE Solutions Ltd, the claimant voluntarily ended her employment. She did not transfer as an employee to a new employer; she became the new owner of the business assets. This was not a TUPE transfer and did not constitute a dismissal.As the claimant ended her own employment by taking over the business assets, she is not entitled to notice pay, holiday pay or September wages from DSE Solutions Ltd. Any unpaid wages arising from the company's insolvency fall to be claimed through the Redundancy Payments Service or through her own company, which took over the business goodwill and client base.The claimant has not disclosed the Transfer of Assets Agreement in her ET1, nor has she provided accurate employment details. This omission has resulted in the tribunal receiving an incomplete and misleading account of the circumstances in which her employment ended. As Managing Director, she was fully aware of the company's financial position and outstanding liabilities at the time she chose to establish her own business and acquire the business assets. She continued trading continuously with the same clients and using the same e-commerce website through her new company from September 2025, after taking over the assets of DSE Solutions Ltd.Evidence supporting the above facts has been uploaded, including the Companies House record of the claimant's incorporation of DSE Office Ergonomics Ltd, the bank statement showing the £1,000 asset purchase payment, and the Transfer of Assets Agreement. My apologies I can't find my signed copy of the agreement. However, I'm sure Helen has a copy.

3. On an initial consideration I directed the following letter be sent:
   the claimant must set out her comments on the respondent's defence no later than 14 days from the sending of thisletter - in particular whether she seeks to join another company as the respondent and/orwithdraw her claim,

   it being apparent that a preliminary issue for the Tribunal may be whether there had been a transfer of an undertaking pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 had taken place, such that liability for any unpaid wages, holiday pay or notice pay would have transferred to DSE Office Ergonomics Limited. That letter was sent on 27 July 2026. The claimant uploaded

a schedule of loss, disclosure documents, a witness statement and a hearing file in readiness for this hearing and she commented in reply to that letter as follows:

My employment was with DSE Solutions Ltd. I was employed by DSE Solutions Ltd from 1 January 2024 until my employment ended on 30 September 2025. My claim relates solely to my employment with DSE Solutions Ltd and concerns unpaid September 2025 wages, accrued but untaken holiday pay and notice pay arising from that employment.

During August 2025, the Respondent experienced cashflow difficulties and struggled to pay my wages on time. He informed me that he intended to cease trading if the company's financial position did not improve. Given the uncertainty surrounding my continued employment, I incorporated DSE Office Ergonomics Ltd on 2 September 2025 so that I would have a means of earning a living if DSE Solutions Ltd ceased trading.

My employment with DSE Solutions Ltd continued after the incorporation of DSE Office Ergonomics Ltd. At the Respondent's request, I continued carrying out my duties as an employee, including pursuing outstanding quotations and customer payments, in an effort to improve cashflow and allow DSE Solutions Ltd to continue trading whilst he considered the company's future.

After my employment ended, I purchased the domain names and took control of the associated email accounts so that I could establish my own business. I created new branding and new social media accounts. DSE Office Ergonomics Ltd did not become my employer, did not assume the employment liabilities of DSE Solutions Ltd and no employees transferred to DSE Office Ergonomics Ltd. My claim therefore remains against DSE Solutions Ltd, the company that employed me and subsequently terminated my employment

4. The respondent provided an updated submission on 1 August 2026, in reality an amendment to its defence, including:

S*tatutory Transfer of Liabilities Under TUPE Regulations 2006*

The Claimant contends that purchasing the assets of DSE Solutions Ltd has no bearing on her employment rights or the Respondent's obligations. This position is legally incorrect under UK employment law:

Scope of Asset Transfer & Goodwill: As confirmed in correspondence, the Claimant purchased the complete operational foundation and "living business" of the Respondent on 30 September 2025. This included the established e-commerce website, active client database, 15 years of customer goodwill, supplier networks, and domain names.

Brand Continuity ("Change of Name"): The Claimant deliberately chose to retain "DSE" in her new company name (DSE Office Ergonomics Ltd) specifically so existing clients and specialist suppliers would perceive the transition as a mere name change rather than a new entity.

Operation of Law: Under Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), the sale of these trading assets and goodwill to continue the exact same specialised activity constitutes a relevant business transfer.

Automatic Transfer of Liabilities: Under Regulation 4 of TUPE, all statutory employment contracts, accrued obligations, notice, and holiday pay liabilities automatically pass from the transferor (DSE Solutions Ltd) to the transferee entity (DSE Office Ergonomics Ltd) by operation of law on the date of transfer (30 September 2025).

5. I considered it was in the interests of justice to permit this amendment. Mr Revington explained that he had not had legal advice when he entered the original grounds of resistance. I had already raised the prospect of the need for another company to be joined as potentially liable, and the respondent's amended grounds of resistance provided further detail of that.

6. Furthermore, the respondent is registered as a company in respect of which there is a proposal to strike off because of a failure to provide returns. Mr Revington told me that he and Ms Bailey had reached the sale agreement described above because of liabilities to HMRC which meant the respondent would likely enter insolvency. It has not done so as yet, because, he tells me, the respondent cannot afford to pay the associated fees, and it is likely the official receiver will be appointed. In those circumstances, it is likely that any sums ordered to be paid will stand as preferential creditors in any insolvency and/or will come from the public purse or prejudice other creditors.

7. In my judgment is in the interests of justice, in all the circumstances of this case, for a determination of the TUPE question to be made and for the amendment to be permitted.

8. I heard oral evidence from both the claimant and Mr Revington. We discussed the relevant documents in the hearing file and the Tribunal's file and each party had the opportunity to question the other. That process took longer than it might have done otherwise – Mr Revington and the claimant were formally in a relationship, as well as working together. Neither party raised this in their pleadings – it became apparent in the course of the hearing. I reserved this Judgment.

Findings and Conclusions

9. The respondent provided ergonomic/occupational assessments for a range of household name employer clients, recommending equipment to be purchased. The business had been built by Mr Revington. He became ill and his then partner, Miss Bailey, stepped in. From January 2024 she undertook visits to clients, responded to all queries, quoted for business, saw new clients, and generally run the business as managing director in his place. The salary paid to the claimant was £3000 per month (gross). At the time of these events she was the only employee.

10. In August 2025 it became apparent that the business could not pay its debts – be that PAYE, VAT or suppliers. Mr Revington and the claimant agreed that she would incorporate a new business from which to trade and continue looking after the

respondent's clients, and hopefully securing new clients and business. The romantic relationship was also broken or breaking down at this time.

11. On 2 September 2025 the claimant incorporated her new company, and began all the preparations for that to trade – essentially establishing a bank account, and new letterhead, but maintaining the DSE main name.

12. The respondent had an e-commerce website to sell products and to provide promotional material. In September payments to the respondent were about £7000, of which about half was website revenue and the other half included payments from clients. Costs – payments to suppliers and others – exceeded income that month.

13. On 30 September 2025 the protagonists agreed a sale figure of £1000 pursuant to the following terms:

TRANSFER OF ASSETS AGREEMENT
This Agreement is made on 30th September 2025 between:
1. DSE Solutions Limited ("OldCo"), company number 07419943, with registered office at 15C Carlisle Road, Pudsey, West Yorkshire. LS28 8PL; and
2. DSE Office Ergonomics Limited ("NewCo"), company number 16690084, with registeredoffice at 37 Old Road, Farsley, West Yorkshire. LS28 6BG.
3. Transfer of Assets
OldCo agrees to transfer to NewCo the following assets:
• Domain name(s), website, and associated hosting rights
• Company email addresses
• The main business telephone number
• Customer and prospect lists
• Outstanding quotations not yet accepted as orders
• Company branding, logos, and marketing materials
• Any other assets explicitly agreed in writing between the parties

Excluded from this transfer
• All debts, liabilities, or obligations of OldCo, including HMRC debts, supplier debts,employee liabilities, loans, or unpaid salaries - Training materials created by Simon – Demo stock, unless specifically listed in an attached schedule

Considerations
• The purchase price for the assets shall be £1,000, payable by NewCo to OldCo once all agreed assets have been transferred into the ownership of NewCo and OldCo has provided a full list of any liabilities relating to the business operations or suppliers.

Orders and Quotes
• Any customer orders already accepted by OldCo prior to completion remain the sole responsibility of OldCo.
• NewCo will not assume liability for fulfilling these orders.
• NewCo may, at its sole discretion, honour outstanding quotations, but is under no obligation to do so.
• Where necessary to secure ongoing supply, NewCo may choose to make voluntary payments to suppliers, but this shall not constitute an assumption of OldCo's debts or obligations.

4. Supplier Relationships
• All supplier agreements, discounts, and credit terms must be renegotiated between NewCo and suppliers directly.
• There is no guarantee that suppliers will continue to trade with NewCo, nor that existing margins or terms will apply.
5. Communication with Customers and Suppliers
• Any communication to customers or suppliers regarding the transfer of assets must be agreed in writing prior to release.
• No statement shall be made implying that NewCo is assuming OldCo's debts or obligations.
• NewCo will only communicate its involvement once the transfer is formally completed and it is able to provide products or services.
6. Non-Compete and Non-Solicitation
• OldCo and its directors agree not to compete with NewCo in:
o the provision of DSE Assessments, and
o the sale, supply, or provision of any goods or services currently supplied by OldCo, for a period of [2] years within the United Kingdom.
• OldCo and its directors further agree not to solicit or approach NewCo's customers or suppliers during this period.
• For clarity, Simon may continue to provide DSE training services independently; however, NewCo and Simon may enter into a separate agreement in the future for NewCo to offer or coordinate DSE training services. Any such agreement will be mutually agreed in writing.
7. Warranties and Representations
OldCo warrants that:
• It owns the assets being transferred and has full authority to transfer them.
• The assets are free from any charge, lien, or encumbrance.
• NewCo acknowledges that: - It accepts the assets "as seen". - No warranties are provided as to supplier continuity, profit margins, or payment terms.
8. Governing Law This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

14. On the same day (30 September 2025) a letter giving the claimant notice was provided to her by Mr Revington at her request. He was in touch with his accountant to provide a final payslip for the claimant setting out a total net sum payable of £5367.42 - with the corresponding sums due to HMRC – arising from £3000 final salary, notice pay (two weeks') £1384.62 and holiday pay of £2630.77.

15. The claimant traded in her new business as a director and owner until April 2026 when she put herself on payroll on minimum wage. Sales were around £22,000 in the first three months of trading with costs of around £15,000. In simple terms, the business can make profit if well run.

16. Conclusion
17. Whether or not a transfer of a business took place on or around 30 September 2025 requires me to consider Regulation 3 (1) (3) which provides:

3.*—(1) These Regulations apply to—*

(a)a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;

(2) In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

18. The sale of business assets requires me to ask whether there has been a transfer of an economic entity which retains its identity.

19. There is much case law in this area, and the assessment for me is multi factoral – that is I weigh up all the facts and circumstances in deciding the question above. I look at this both from different perspectives - the customers' experience is relevant as is that of the directors and employees and others. In simple terms:
    19.1. The claimant was the only employee at the time of the sale undertaking work on behalf of the assets – website, know how, software, good will and so on - she was the face seen by the customers;
    19.2. that same person was the person servicing many of the same assets after the sale (albeit as owner);
    19.3. Of the assets, not all transferred but those transferring were significant – website and others - *Domain name(s), website, and associated hosting rights, Company email addresses, The main business telephone number, Customer and prospect lists, Outstanding quotations not yet accepted as orders, Company branding, logos, and marketing materials* – some demonstration stock was included in the sale – of little value to anyone but useful to someone wanting to demonstrate products.

    19.4. The above were resources grouped with others which had as their purpose the pursuit of profit in the supply of: ergonomic/occupational assessments and sales of ergonomic display screen and other equipment;
    19.5. The claimant chose a name similar to the respondent – she could have simply chosen "Office Ergonomics", which was discussed between the protagonists, but she chose to retain "DSE";
    19.6. Of liabilities, employee liabilities were agreed not to transfer in the written agreement (as is often seen when businesses in distress change hands);
    19.7. The claimant did set up a new bank account, had to satisfy suppliers of the governance of the new company (understandably) and new forms for purchase orders had to be done for clients. Otherwise she carried on with the same work, pretty much as before (she used her own laptop previously as she does now), but is in control of what she pays to herself and when and how.

20. Considering the matters above, as explored in the evidence, I have concluded there was a transfer of a business as defined above on or around 30 September 2025. The contract of employment was terminated on transfer by the respondent, but pursuant to Regulation 4 (2) (b), the respondent's omission in failing to pay the final wages and sums of the claimant is deemed an act of DSE Office Ergonomics Limited, the transferee, and liability for it transfers. This risk was well understood by

the claimant when she chose not to name her own company as a respondent, and in those circumstances the claim is dismissed.

Employment Judge JM Wade

27 September 2026

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Transcripts of hearings are available on payment of a fee – there is a practice direction available on line giving further information.