



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Williams

**Respondents:** Purple Bricks Group Plc

**At an attended Preliminary Hearing  
at the Employment Tribunal**

**Heard at:** Nottingham                      **Heard on:** 29 and 30 March 2023  
**Reserved Judgment:** 31 March 2023

**Before:** Employment Judge Hutchinson (sitting alone)

## Representation

**Claimant:** Simon Cheetham, KC  
**Respondent:** Paul Gilroy, KC

# RESERVED JUDGMENT

The Employment Judge gave judgment as follows:

1. The Claimant was not an employee of the Respondent until 1 September 2021.
2. The Claimant was not a worker engaged by the Respondent until 1 September 2021.

# RESERVED REASONS

## BACKGROUND TO THIS HEARING

1. The Claimant presented his claim to the Tribunal on 8 August 2022. He said that he was employed by the Respondents from 30 November 2015 until 26 May 2022. He described himself as "Territory Owner".

2. He claimed unfair dismissal.
3. He said that whilst he had been described as self-employed, he was not. He said he was an employee of the Respondent.
4. He acknowledged that he had employed other staff but claimed that these staff were paid by Purple Bricks via him.
5. He said that his status was changed in September 2021 to being an employee because of an HMRC investigation and a Scottish Territory Owner successfully claiming employee status in the Employment Tribunal.
6. His complaint was about his dismissal which had been effective on 26 May 2022. His ability to claim unfair dismissal therefore depended on him having service of at least two years and his claim was that he had been employed since 30 November 2015.
7. In their response the Respondent said that he had only been employed since 1 September 2021 and therefore did not have sufficient service to claim unfair dismissal. That in any event they dismissed him on grounds of capability and that the dismissal was fair.
8. Prior to September 2021 they said that he was not an employee of the Respondent. He had been the owner of a Territory Operating Company (TOC) which had, what was essentially, a franchise agreement with the Respondents and that later his Company DNPB Limited had been engaged as a Local Property Company (LPC) by another TOC. This had taken place with effect from 11 February 2020.
9. Although the Claimant had not ticked the box in his claim form for wages it was also apparent that he was making a claim for unlawful deduction of wages. This related to alleged deductions made because of customer complaints.
10. Mr Williams case has been consolidated with 6 other claims that are now all before the Midlands East Employment Tribunal. All the cases have been consolidated and matters came before my colleague Employment Judge Broughton on the 7 December 2022.
11. At that hearing it was confirmed that Mr Williams claimed that he was an employee and or worker from November 2015 until May 2022. During this period the Respondent asserted that he had operated a licence as a Territory Owner through a Territory Operating Company (TOC) and during a later period when his was operating as a Local Property Expert (LPE) providing services as a Property Expert through a Local Property Company (LPC).
12. The other Claimants all claim they were employees and in some cases a worker during periods when they worked as an LPE through an LPC.
13. As Mr Williams was the only Claimant whose status needed to be determined both during the period he operated via a TOC and via an LPC Employment Judge

Broughton determined that it was appropriate for this to be a lead case within the meaning of Rule 36 of the Employment Tribunal Regulations for the purposes of determining the status issue.

14. It was determined that there should be an open attended Preliminary Hearing to be heard on 29 and 30 March 2023 for an Employment Judge to determine the preliminary issue of status of the Claimant. All the other cases were stayed pending the determination of the status issue.
15. Employment Judge Broughton ordered some further particulars to be provided and made directions in the usual way about disclosure of documents, preparation of a file and exchange of witness statements.
16. Mr Loy, Solicitor for the Claimant had already written to the Tribunal on 2 December 2022 regarding a request for a third-party order for specific disclosure of a report prepared by the HMRC. It was pointed out that an order had been made for general disclosure on the status issue and that once that exercise had been completed that would be the appropriate time to consider a request for specific disclosure.
17. Both parties were legally represented and were aware of their duties about disclosure.

### **THIS HEARING**

18. At the commencement of the hearing, I dealt with the Claimant's application for specific disclosure. The Claimant renewed the application that he had made at the beginning of December on 11 January 2023 therefore prior to general disclosure saying that he could not comply with the directions to particularise his claim without certain documents. This had led to a lengthy exchange of correspondence including an application by the Claimant to strike out the response which application was not pursued.
19. When my colleague Employment Judge Ahmed reviewed the correspondence, he decided that the issue of disclosure should be considered at the start of the Preliminary Hearing.
20. At the start of the hearing, I had a discussion with the representatives who are learned and experienced advocates.
21. The issue was resolved by discussion and assurance between the parties. Mr Gilroy assured the Tribunal that the Respondents had disclosed all the documents in their power and possession that were relevant to the issues of the Claimant's employment status. He assured me that apart from privileged discussions with HMRC there was no document that comprised an HMRC investigation. They had disclosed a letter from the HMRC dated 21 February 2020 concerning the HMRC's "Emerging View" that the relationship between the Respondent and its LPE's was one of employment. That letter is in the bundle. With those assurances Mr Cheetham was satisfied. In the discussions he was also satisfied as regards the other matters raised.

22. Apart from some additional documents that were produced later during our discussions it was agreed therefore that the bundle of documents comprising two lever arch files and 688 pages was sufficient for me to make the determinations that were necessary.

### **THE ISSUES**

23. The issues that I must determine are set out in the notes of the preliminary hearing conducted by my colleague Employment Judge Broughton on 7 December 2022.
24. They are.
1. Was Mr Williams an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996 at any point during the period 30 November 2015 to 26<sup>th</sup> of May 2022 such that he can bring a claim of unfair dismissal.
  2. Was Mr Williams a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996 at any point during the period 30 November 2015 to 26<sup>th</sup> of May 2022 such that he can bring a claim for unlawful deduction of wages.

### **THE EVIDENCE**

25. I heard evidence from the Claimant. For the Respondents I heard from Mauricio Hernandez who is HR Director and Gemma Harris who is Director of Partnerships and a former LPE herself.
26. Mr Williams own evidence was not consistent and/or reliable. In his statement he did not at any time refer to his Company, DNPB Limited.
27. Whilst he asserted that HMRC had decided that individuals who were either TOC owners or LPE's were employees of the Respondent he produced no evidence to support any such contention. The emerging view letter itself only refers to LPE's and not TOC owners.
28. He also stated.
- "I know that a successful Tribunal claim was brought in Scotland against Purple Bricks (page 158) but the Claimant subsequently withdrew his claim after being threatened under this "oppressive clause". That assertion was not correct.*
29. He also had difficulty when he was questioned about making a claim from the Government under the Coronavirus Job Retention Scheme. It transpired that he was claiming under the scheme as an employee of DNPB Limited for several months whilst he was still working and being paid a salary by his company. His explanation that it was a matter that was dealt with by his accountant is not satisfactory.

30. Gemma Harris for the Respondents gave me consistent and convincing testimony about her time as an LPE and how she viewed herself and although there was some difficulty with Mr Hernandez evidence, he tried to give honest evidence to me but was in some difficulties because he had not really been involved with this case and could not answer questions when asked about the arrangements with the Claimant.
31. As I have described above there was an agreed bundle of documents and where I referred to page numbers it is from that bundle.

### **FINDINGS OF FACT**

32. The Respondent is the UK's largest online Estate Agency. It offers a platform for property buyers and sellers. The Respondent does not have a physical High Street presence. At the relevant time i.e., between November 2015 and September 2021 it divided the Country into several territories. The Respondent then entered into an agreement with a Territory Owner Company and the owner of that Company was known as the Territory Owner. Each TOC was a separate legal entity and managed by its owner. The owner and the Company then entered into a Territory Owner Agreement with the Respondent; I have not seen the agreement signed by the Claimant. The Respondent do not have that agreement. The Respondents were able to produce the signature page at page 382/3 and a template of the agreement which is at pages 352-380, and I am satisfied that this was the agreement that the Claimant signed on 16 June 2016. The agreement recites that the Territory Owner (in this case DNPB Limited) wished to acquire from the Respondents (which is described as Software Licensor) the right to operate the business and make use of and exploit the use of a system and the marketing campaigns in accordance with the terms of the agreement. The individual signed the agreement as the Owner and Director of the Territory Owner. That was Mr Williams.
33. There are several significant provisions. Under this agreement DNPB Limited agreed the following:
  - 33.1. To operate from its own business premises (clause 6.2).
  - 33.2. To register for VAT (clause 6.3(h)).
  - 33.3. To maintain its own.
    - 33.3..1. Professional indemnity insurance.
    - 33.3..2. Employers' liability insurance.
    - 33.3..3. Public liability insurance.(clause 6.7).
  - 33.4. To ensure that its own staffing levels were adequate (clause 6.7).
  - 33.5. To indemnify the Respondent as Software Licensor (clause 6.18).

- 33.6. To register with the Property Ombudsmen (clause 6.21).
- 33.7. To procure the person responsible for managing the business and all staff to attend such further periods of training at the Territory Owner's cost as maybe required to meet the standards necessary to represent the brand (clause 6.10).
34. Under the agreement express provision was made for the sale of the TOC (page 368). This is under clause 10 of the agreement. It envisaged a Territory Owner wishing to sell or assign or otherwise dispose of its business. If it did so it first had to obtain the written approval of the Respondent. The Territory Owner would pay to the Respondent a sum equal to 5% of the sale price or £20,000 whichever was the greater.
35. The Claimant had worked as an Estate Agent for about 3 years prior to joining the Respondents. I have seen the offer letter dated 3 November 2015 at pages 109-110. The offer is to be a Territory Owner and several postcodes were offered to the Claimant in the Lincoln area. It was envisaged that he would need to recruit other people into his licence and a sub licence agreement was provided which set out the terms of that sub licence.
36. There was no negotiation about the terms of his own company's agreement with the Respondent nor about the terms of the sub licence agreement.
37. Initially he was to be paid £2500 per month for a period of 3 months and then the TOC would receive payments on the following basis.
- £200 for every instruction.
  - £80 for every viewing service taken up.
  - £50 on completion of every legal instruction.
  - £50 for every mortgage sign up on completion.
  - £100 for every letting and move in.
38. He was provided with equipment namely.
- An approved laptop/tablet.
  - A camera.
  - A digital measuring device.
39. He was required to attend a training course which would be held over a period of 10 days.
40. That induction training took place from 30 November 2015.

41. All Territory Owners created their own Companies and operated through that Company. In the Claimant's case that was DNPB Limited. The Company was formed by the Claimant and incorporated on 9 November 2015.
42. As anticipated in the offer letter sent to Mr Williams the business was successful and he was offered other postcodes in the area.
43. He engaged 3 local property experts during his time as a Territory Owner. They were.
  - 43.1. Heidi Gower who was engaged on 25 April 2017. The offer was made to Mrs Gower by DNPB Limited at page 179-180. As a local property expert, she would oversee her own postcode to postcode region. After the first 2 months when she would receive £2000 for each month, she would be paid for;
    - 43.1..1. Sales instructions £150.
    - 43.1..2. Legal completion £40.
    - 43.1..3. Mortgage completion £40.
    - 43.1..4. Viewing £125.

She was provided with similar equipment to Mr Williams and was again required to attend a two-week training course.
  - 43.2. Marie Rudd was recruited on 28 November 2018 on similar terms as per page 181-182.
  - 43.3. Christian Bell in an agreement dated 30 November 2018 at page 202-203 again on similar terms.
44. An agreement was entered into then between DNPB Limited, which was the Territory Owner and the service company that was operated by these individuals. That agreement was known as a Licenced Business Partner Agreement and the agreement was signed by Mr Williams and Miss Rudd at page 183-199. The agreement was also signed on behalf of what was described as the Software Licensor namely Purple Bricks.
45. Under this agreement the Territory Owner would pay the Licence Business Partner the published rates for the services referred to above and granted the business partner right to operate using the know how and intellectual property that he had acquired from Purple Bricks. Under this agreement payments were made by DNPB Ltd to Rudd Property Services Ltd which was a company owned by Ms Rudd.
46. Under clause 4 of the agreement (page 189) one of the obligations of the TO was to provide support to the business partner and documentation which in turn was provided by the Respondent.
47. The business partners obligations are set out at paragraph 5 of the agreement at

pages 189-192. It included.

- 47.1. Requirements about where the business was operated from (5.2).
- 47.2. The conduct of the business (5.3)
- 47.3. Restrictions on referral business i.e., to use only those referral businesses specified in paragraph 5.4 and in the schedule to the agreement.
- 47.4. Restrictions on the use of the My Purple Group System.
- 47.5. Restrictions on maintaining a vehicle in a clean and road worthy and suitable condition and not to decorate it with any form of livery unless agreed in writing with Purple Bricks and the Territory Owner.
- 47.6. Intellectual property restrictions.
- 47.7. Ensuring any staff engaged agree confidentiality and non-compete agreements and attend training as required.
- 47.8. Standards of conduct and appearance.
- 47.9. A requirement to register with the Property Ombudsman.
- 47.10. A requirement to have professional indemnity insurance.
- 47.11. A requirement to register with HMRC Anti-Money Laundering Registration.
48. The agreement was subject to termination on giving 3 months' notice and the agreement could be terminated by the Territory Owner if any of the situations arose as envisaged in paragraph 8 of the agreement.
49. There were post termination restrictions on the licence business partner for a period of 12 months.
50. As Territory Owner, Mr Williams reported to his local Regional Director.
51. The TOC's met all the costs and expenses associated with running their business including the payment of all staff fees to local property experts or wages and the TOC had to ensure that it engaged enough staff to meet customer demands within its territory.
52. It can be seen that under the TOA the Respondent is described as the Software Licensor, and it referred to the Licensor having spent time, money and effort in developing its software which would enable the operators to provide Estate Agency and Residential Lettings Services under the name of Purple Bricks. Each operator had its own postcodes allocated to it and it was envisaged that the TOC would subcontract the provision of services within their territory to Local Property Experts.
53. Throughout the TOA's it refers to the Territory Owners business and under the



definitions the business is defined as *“The business operated by the Territory Owner and providing a service of Estate Agency being Residential Sales and Lettings”* (page 355).

54. At all times prior to his dismissal it was the view of all the parties that Mr Williams was not an employee of the Respondents. He operated through his own Company and paid himself a small monthly wage with most of his earnings coming from dividends from the profit of his enterprise. I have seen his bank accounts but not his published accounts which show a considerable fluctuation in the amounts his Company received from Purple Bricks. He paid for his own accountant who advised him that he was entitled to make a claim under the Government's Job Retention Scheme for a grant and it can be seen from the bank statements that he received payments under that scheme between January and September 2021 whilst his company was still receiving substantial sums of money from the Respondents. He also applied for and obtained a Bounce Back loan from the Government in the sum of £10,000 which he used to pay off his car loan.
55. The Company, DNPB Ltd, paid others out of that account in the operation of his business. Those bank account statements are at pages 665-674. I particularly noted the payment to Mrs Z Allenby of 1 February 2021 (page 666) for viewing.
56. The Claimant registered his business for VAT, and he paid corporation tax. As I have said above, I have not seen his or the Company's tax returns so I have no information about how the income Mr Williams received from DNPB Limited was treated for tax purposes.
57. Mr Williams was not provided with a company car, and it appears from the bank statements that he expensed his car through the Company. Similarly, he provided his own legal and accountancy advisers.
58. There was some control by the Respondents over the way he operated his business. That control is covered in the agreement under his obligations and about the service level agreement. There is nothing unusual though in a business such as this for the Respondent to expect certain standards of delivery of the services to what are customers of Purple Bricks. At the end of the day those customers paid Purple Bricks and would complain to Purple Bricks if they were unhappy with the service they had been provided with. The customer service deadlines simply set out the requirements for ensuring that Purple Bricks customers are satisfied with the services that are provided to them by the Claimant.
59. I have also considered the issue of the referral businesses. TOC's and LPE's were required to refer conveyancing work to specified firms and mortgage business to specified firms. I am satisfied that that is simply part of a commercial arrangement that Purple Bricks had with those referrers, and it does not alter my overall view of the way in which this business operated.
60. I am satisfied that it was a matter for the TOC's how they operated their business and so long as the service levels were provided satisfactorily it was a matter for them as to how they conducted their work and how many people they needed to

undertake that work on their behalf. Although they had to recruit appropriately qualified people, they were free to recruit who they wanted, and they were responsible for their own costs in recruiting these people.

61. On 11 February 2020 DNPB Limited entered a LPCA with THF Estimates Limited (page 444).
62. From then until 1 September 2021 Mr Williams Company therefore operated as an LPE through his LPC. Mr Williams provided his services as an LPE via his LPC to a TOC.
63. Mr Williams has said very little about this in his witness statement, but I was greatly helped by the evidence of Gemma Harris.
64. The Local Property Company Agreement is at page 404-441, and it operates on the basis that I have described above.
65. As with the TOC's the party can terminate the agreement on giving 3 months' notice. There are similar provisions in clause 6.3 about the conduct of the business. The LPC is responsible for its own vehicle, its own insurance including professional indemnity insurance and public liability insurance.
66. It has the right to engage its own staff under clause 6.8 although certain standards are required in respect of those staff.
67. There is an indemnification clause in clause 6.14 whereby the LPC indemnifies and holds harmless the Licensor and TOC against all costs, claims and expenses including legal costs incurred or suffered by the Licensor or the TOC as a result of any breaches of the agreement by the LPC.
68. There are similar provisions in respect of training, compliance with bribery laws and anti-money laundering legislation and after termination of the agreement there is a non-complete and non-solicitation clause.
69. In terms of the day-to-day practicalities' referrals were generated centrally by the Respondent which fell within the postcode of the territory the TOC operated in. The TOC would pass on those leads where appropriate to the LPE and it was up to the LPE whether they followed these up or not. There was no requirement to do so and there were no disciplinary or performance measures if they did not do so.
70. It was in their interest to follow up leads and it was in the interests of Purple Bricks to be concerned if leads were not followed up. That was a normal commercial arrangement.
71. All LPE's enjoyed the freedom and autonomy of working in a self-employed capacity setting their own working hours and deciding what work they wanted to do and when they would do it. They had an opportunity to grow a business. If they did not want to take on particular jobs, they could simply say so.

72. They had the benefit of the Respondents brand name behind them but the freedom to expand their business or not as they wished to do so.
73. There was no requirement for LPE's to personally carry out the services covered by the agreement between the LPC and the TOC. LPE's could ask other LPE's to carry out the services covered by the agreement or others so long as they were suitably qualified. In Miss Harris's case she was able to use members of her family who had appropriate experience of dealing with Estate Agencies.
74. LPE's were able to engage other staff and had a genuine right to appoint a substitute to do the work that was covered by the agreement if they wished to do so.
75. LPE's were not on the Respondents payroll. They raised an invoice with the TOC, and they were paid by the TOC. Tax was not deducted. They were responsible for their own accounts and engaged their own accountants and conducted their affairs free of any hinderance from the Respondent.
76. There were no regular payments received after the first two months and as can be seen from Mr Williams bank statements referred to above the payments that he received varied greatly.
77. LPC's were provided with a laptop computer, a camera and a laser measurer but had the option of using their own equipment if they wished to do so. In Mr Williams case he opted for purchasing a camera which he put through his own business.
78. Until the termination of these agreements Mr Williams had not expressed any view that he had been an employee and enjoyed the considerable benefits of self-employment.
79. I have seen the letter from HMRC dated 21 February 2020 at page 560. This has been referred to as the "*Emerging View – Contract of Employment*" letter.
80. This related to LPE's and not TOC's. I have also seen the slides that HMRC prepared and sent to the Respondents as part of the view that they took. I must undertake my own review of the circumstances of this case and apply the appropriate employment law and legislation to determine in this particular case whether owners of TOC's and LPC's were in fact employees of the Respondent.
81. The Claimant says that his status was changed because of an HMRC investigation and that HMRC had concluded that they were employees. I have seen no evidence of what the final view of HMRC was but not surprisingly there was a dialogue between HMRC and the Respondent which was part of the reason the change in status of people like Mr Williams who by then was an LPE.
82. I have seen the questions and answers form issued to the Claimant and others in August 2021 at page 612. It is clear from that that it was a significant move for the Respondents to change to a fully employed model for everyone in sales which affected over 700 people. The main purpose of the new model was to increase the

amount of control the Respondent had on the way that their business was delivered with a new structure and contracts of employment which exerted much more control over its new employees. The employees would have to work contracted hours and would be subject to capability and disciplinary procedures and performance targets across the business.

83. It also acknowledges in the questions and answers at page 617 HMRC's interest. It confirms at paragraph 28 that there has been no investigation although they are aware of HMRC's interest in their self-employed model and that it was "*one factor in our consideration*". It confirmed that the HMRC had not launched any investigation into the business model.
84. Mr Williams was issued with his contract of employment on 24 August 2021. The contract is at pages 223 to 241. He commenced his employment on 1 September 2021 and his new position was that of Local Property Partner. He was paid a basic salary of £25,000 per annum and was eligible to commission and bonus.
85. He was now entitled to other benefits namely.
  - 85.1. Holiday pay.
  - 85.2. Working regular working hours.
  - 85.3. Pension.
  - 85.4. Sick pay.
86. He was to work from home and was subject to a probationary period.
87. If he was absent from work, he had to comply with the absence procedures.
88. His conduct was subject to disciplinary and grievance procedures and on termination he could be paid a payment in lieu of notice.
89. He could put on Garden Leave and there were post termination obligations as you would expect in an employment contract of this nature.
90. Under these arrangements he was required to devote his full time and attention to the business of the employer and obey all lawful instructions of the employer and report any wrongdoing to his employer.
91. On 26 May 2022 his employment was terminated following a performance meeting. The Company did not follow its own disciplinary procedure and provided him no right of appeal. Under the terms of his contract of employment the Respondent was entitled to do this

## **THE LAW**

### **Legislation**

92. Section 230 of the Employment Rights Act 1996 (ERA) provides as follows.

**“230 Employees, workers etc**

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

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

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

(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.

(5) In this Act “employment”—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and “employed” shall be construed accordingly.”

93. Learned Counsel of both the Claimant and the Respondent referred me to the well-known case law in this area. In particular.

- ***Bates van Wilkenhof v Clyde and Co LLP [2014] ICR740 SC***
- ***Hospital Medical Group Limited v Westwood [2013] ICR415***
- ***Autocleanz v Belcher [2011] ICR1157***
- ***Uber BV and others v Aslam and others [2021] ICR657 SC***
- ***Readymix Concrete Limited v Minister of Pensions and National Insurance [1968] 1 ALL ER433***
- ***Hall (Inspector of Taxes) v Lorrimer [1984] ICR218***
- ***Stephenson v Delphi Diesel Systems Limited [2003] ICR471***
- ***Cotswold Development Construction Limited v Williams [2006] IRLR181***
- ***Quashie v Stringfellow Restaurants Limited [2013] IRLR99***
- ***Pimlico Plumbers Limited v Smith [2018] UKSC29***

- ***Carmichael v National Power Limited [2000] IRLR43***
- ***Mingeley v Pennock Ivory T/A Amber Cars [2004] IRLR373***
- ***Mirror Group Newspapers Limited v Gunning [1986] IRLR27***
- ***Addison Lee v Gascoigne [2018] UKEAT/0289/70***
- ***Catamaran Cruises v Williams [1994] IRLR386***

94. As Mr Cheetham described, I am very familiar with the recent case law concerning employment status and the importance of looking at the true nature of the agreement between the parties. There is *“not a single key to unlock the words of the statute in every case”*.
95. Sometimes it is easy to see that a particular Claimant is an employee or is a worker but often it is not and as can be seen from the case law every case turns on its own circumstances.
96. The true agreement is not always reflected in the terms and conditions where one party is at a considerable advantage over another party. I must have regard to the reality of the mutual obligations and the situation.
97. That is not to say that the contract is not important, it is.
98. As Mr Cheetham described the usual starting point is the passage from the judgment of McKenna J in the Readymix Concrete case.

*“A contract of service exists if these three conditions are fulfilled;*

*(i) The servant agrees that in consideration of all wage or other remuneration he will provide his own work and skill in the performance of sub service for his master.*

*(ii) He agrees expressly or impliedly that in performance of that service he will be subject to this control in a sufficient degree to make that other master.*

*(iii) The other provisions of the contract are consistent with it being a contract of service.”*

99. In this case, as in so many others, there are factors which support the proposition that the Claimant was an employee or a worker but there are also factors which detract from that and overall, there is no single determining factor. I must apply what is described as a multiple test as described above. I must decide what the true situation was in the circumstances of this case.

## **Conclusions**

100. As both advocates have said in this case determining whether Mr Williams was either an employee or a worker does not involve me drawing up a list of the factors for and against the proposition, totting them up and reaching a conclusion. The analysis is qualitative rather than quantitative.

101. The most important factors in this case I am satisfied are as follows.

101.1. The Claimant created his own Company as a vehicle for him to conduct business with the Respondent. He provided all his services whether as a TOC or LPC via DNPB Limited.

101.2. Not only was he an employee of DNPB Limited but he engaged other Local Property Experts contracted with DNPB Limited through their own Companies namely.

- Heidi Gower
- Marie Rudd
- Christian Bell

102. Under his TOA the Company acquired from the Respondent a Software License which comprised the right to make use of the Software Licensors software. Whether it was akin to a franchise agreement or not is not the point.

103. The agreement refers to the Territory Owners business and it was clearly the intention of the parties that this was a business operated by Mr Williams providing Estate Agency services and he would be entitled to operate in any way he wished in the postcodes that were granted to him.

104. This involved not only referrals made by the Respondent but also from leads he created himself.

105. His business was registered for VAT.

106. He was responsible for providing his own;

106.1. Professional indemnity.

106.2. Employers liability.

106.3. Public liability insurance.

107. He was responsible for hiring his own staff and making sure that the levels of service were adequate.

108. He had to register his business with the Property Ombudsman.

109. He was responsible for paying for the attendance of training of all staff who he engaged.

110. The TOA made express provision for the ability of him to sell his business.

111. The Local Property Company Agreement has almost all the same provisions as the TOC except for the ability to sell the business.

112. In respect of his dealings with HMRC the business paid corporation tax on its dividends on the profits that he had made from the business. I have not seen the Claimant's personal tax returns, but it appears from the information that I have received that he only paid himself a nominal salary out of the business. All his running costs including of those who also worked at the business were paid by DNPB Ltd.
113. The Respondents provided a small amount of equipment for undertaking the work comprising a laptop, camera and measuring device but they did not provide any motor vehicles which were paid for by TOC's and LPC's.
114. The TOC's and LPC's had their own legal and accountancy advisers.
115. Importantly there was no obligation on TO's or LPE's to personally undertake any work.
116. The reality was that the LPE's undertook the work on the ground and invoiced the TOC for the work they did. The TOC then invoiced the Respondent which included the work that the TOC owner had done himself. In the Claimant's case by his Company, DNPB Limited.
117. There was little or no control by the Respondents on the way that the TOC's and the LPC's carried out the work.
118. The LPC's could subcontract their own Companies work and could alter customer appointments without approval by the Respondent. Even if they had accepted an appointment with a customer, they could contact the customer and rearrange the date and time of the appointment if they wished to do so or arrange for another LPE to attend a meeting with the customer.
119. There was no restriction on the TOC's and LPC's working for others, and they were free to set their own working arrangements including hours and holidays. At no stage did they ever have to seek approval from the Respondents of any of these matters.
120. In this case the Respondent paid fees to the TOC's who in turn paid fees to the LPC's. There was no fixed or set amount and the amount of fees that could be earned varied greatly each month.
121. The TOC's and LPC's were run as their own business, assumed their own risks and insured against those risks. They were in business on their own account.
122. As Mr Gilroy described, "*They were not at the beck and call of the Respondent*". They could do as little or as much as they wished to do and had complete freedom as to running their business.
123. Mr Williams chose to accept the structure of the arrangements with the Respondents and had considerable advantage from those arrangements both in terms of his tax position and his liability.



- 124. The advantage that he had included being able to be paid by HMRC under the Governments Job Retention Scheme and obtaining a Bounce Back loan also from HMRC. Neither of these are consistent with him regarding himself in anyway as being an employee or worker of the Respondents.
- 125. I am satisfied that Mr Williams was an entrepreneur who owned and managed his own business DNPB limited. Whilst there were contractual obligations that DNPB limited had with the Respondent they did not amount to any control of his business and the way it operated other than in an ordinary commercial arrangement.
- 126. I am satisfied in the circumstances of this case that until the change in the structure whereby he was offered and accepted a contract of employment Mr Williams was operating on his own account in his own business through his Company DNPB Limited and was not prior to 1 September 2021 an employee or worker of the Respondents. Only after that date did he become an employee and a worker which then continued until his dismissal.

## **CASE MANAGEMENT ORDER**

### **Made pursuant to the Employment Tribunal Rules 2013**

#### **PRELIMINARY HEARING**

- 1. A Preliminary hearing will be conducted by an Employment Judge by telephone commencing **on Friday 9 June 2023 at 10.30am**. It has been given a time allocation of **2 hours**.

To take part you should telephone **0333 300 1440** on time and, when prompted, enter the access code **8125769#**.

[Please note that if you intend to dial into the telephone hearing from a mobile phone, higher rates apply and you may wish to check the call rate with your service provider].



\_\_\_\_\_  
Employment Judge Hutchinson

Date: 11 May 2023

JUDGMENT SENT TO THE PARTIES ON  
15 May 2023

.....S.Cresswell.....  
FOR THE TRIBUNAL OFFICE

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