



EMPLOYMENT TRIBUNALS

Claimant: Mrs A E Johnson
Respondent: Mrs G Higgins
Heard at: Leicester
On: 15 May 2019
Before: Employment Judge Faulkner (sitting alone)

Representation

Claimant: In person
Respondent: Ms S Firth (Counsel)

JUDGMENT

1. The Claimant was employed by the Respondent from 23 July 1998 until 25 July 2018.
2. The Claimant is entitled to a statutory redundancy payment of £960.
3. The Claimant was dismissed in breach of contract. The Respondent is ordered to pay her the sum of £160, which includes an increase in the award pursuant to section 38 of the Employment Act 2002.
4. If the parties are unable to agree whether the Claimant is entitled to compensation in respect of annual leave pursuant to the Working Time Regulations 1998, and if so in what amount, within 28 days of the date on which this Judgment is sent to the parties, they are to notify the Tribunal so that the matter can be listed for consideration at a Remedy Hearing.

REASONS

Complaints

1. By a Claim Form presented to the Employment Tribunal on 14 November 2018, the Claimant claims a right to a statutory redundancy payment and pursues complaints of breach of contract, that is failure to give the required notice of termination of employment, and failure to make a payment of compensation related to entitlement to annual leave under the Working Time Regulations 1998 (“the WTR”).

Issues

2. The key issue in the case is the Claimant’s status in relation to the Respondent. I am content to adopt Ms Firth’s suggested way of dealing with that issue, namely:

2.1. Was the Respondent receiving services from the Claimant as a client or customer of the Claimant’s business?

2.2. If not, was the Claimant a worker in relation to the Respondent?

2.3. If so, was the Claimant also the Respondent’s employee?

3. If the Claimant was the Respondent’s employee, the Respondent concedes that she was dismissed and by reason of redundancy. The only question in relation to that matter would therefore be the amount of the statutory redundancy payment.

4. Evidently, the claim for notice pay also depends on the Claimant establishing that she was the Respondent’s employee. If she was, the Respondent says that she was given eleven weeks’ notice of termination of her employment. The Claimant says that she was given no notice of termination. It must therefore be decided what notice, if any, was given and what compensation the Claimant is entitled to as a result.

5. As for the holiday pay complaint, if the Claimant was either the Respondent’s employee or a worker, it is necessary to establish the holiday year, the Claimant’s entitlement to leave in that year, how much leave was taken, and the compensation that she is entitled to in respect of any untaken leave.

6. The Claimant also says that she was not given a written statement of the particulars her employment pursuant to section 1 of the Employment Rights Act 1996 (“ERA”). If therefore she is entitled to a statutory redundancy payment, compensation for breach of contract or compensation under the WTR, she also claims an increase in any compensation awarded, pursuant to section 38 of the Employment Act 2002 (“EA”).

Facts

7. Both parties produced short written witness statements and I heard oral evidence from them both. On the Respondent’s behalf, a short statement was also produced by Ms Helen Sharpe, a friend of the Respondent for whom the Claimant also did some work, and I heard brief oral evidence from her as well. In addition, I considered a small number of documents and both parties made oral submissions. The

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Claimant was assisted by her husband, Mr Ken Johnson. Having considered all of this material, I make the following findings of fact.

8. The Claimant began working for the Respondent in 1998. I will return to the exact date below. Prior to working for the Respondent, she was employed by a business called Greenclean Services, a role she continued to undertake until the end of 1998, and thus for a short time doing that job and working for the Respondent at the same time. The Greenclean role involved cleaning a supermarket early in the morning. Prior to working for Greenclean, the Claimant worked cleaning someone's home in Nailstone for 11 years. Her unchallenged evidence was that this was an employment relationship. During that time, she worked for two years during the evenings at a Caterpillar factory.

9. The Claimant did not advertise her services, though she accepted that many people who know her would know that she was a cleaner. She does not know how the Respondent came to hear of her but says that it was the Respondent who got in touch with her. The Respondent said she heard about the Claimant through someone she knew at Age Concern whose niece the Claimant was working for, passed on her details and the Claimant contacted her. The Claimant does not know who that might be and principally for data protection reasons the Respondent was unable to provide the name of the person she spoke to. It does not seem to me to matter, because either way the Respondent initiated the contact, either directly or through someone she knew.

10. It is agreed that after contact was made the Claimant visited the Respondent at her home. There is no written record of the agreement between the parties. The Claimant says she was shown what the Respondent wanted her to do. The Claimant also says that the Respondent set the hours of work and the pay. Specifically, the Claimant says that the Respondent told her she could only afford 4 hours twice a week, asking the Claimant if she could fit in the required cleaning within that time, which she said she could. The Respondent says that the Claimant told her how long the required work would take and that she "agreed her terms". I have to resolve this conflict of evidence on the balance of probabilities, working in the complete absence of any written evidence touching on the matter. On balance I prefer the Claimant's account. This is on two grounds. First, it was the fact that the Respondent could no longer afford to pay the Claimant which led to the end of the working relationship in 2018. It seems more likely to me therefore that in taking on a cleaner in the first place the Respondent would have had in mind what she could pay, which as detailed below was based throughout most of the working relationship on the National Minimum Wage, and for how many hours. Secondly, Ms Sharpe's oral evidence was that when the Claimant carried out a limited amount of work for her (see further below) she asked what the Claimant was paid by the Respondent and paid her accordingly. The Claimant did not outline "her terms" on that occasion, and I find it unlikely that she took any different approach when first meeting the Respondent.

11. There does not appear to have been any specific description of what the Claimant was required to do, other than that the Respondent told her she wanted the cleaning done properly – the Respondent does not recall saying that, but on balance it seems inherently likely something along those lines was said – and that the Claimant was not to clean the garage. The Respondent's oral evidence was that she had never had a cleaner before so was not able to say what was required, although in her statement she says that if the Claimant had been an employee, she would have set the specific tasks she required completing. There is something of an inconsistency there. I do accept however the Respondent's evidence that the Claimant said she would change the beds, do the dusting, vacuum and also clean

the kitchen, which the Respondent was happy with. Apart from attending to any notes left by the Respondent asking her to do particular things, the Claimant was left to determine what that meant, deciding how any particular additional task the Respondent might highlight for her would be done. The Claimant says, in uncontested evidence, that at the end of the conversation the Respondent asked if she would like the job and the Claimant said that she would.

12. As already noted, it is agreed that there is no written record of the parties' relationship. The Claimant says that she asked in 1998 for written confirmation of the arrangements but never received anything. The Respondent says that if the Claimant had asked for a written agreement, she would have had to put it in place, because it would have made the relationship formal. The Respondent's case is that she offered to set things up as an employment relationship, on two occasions, as a "legitimate expense" of the play group which the Respondent ran and which met in a church hall. Although she cannot recall what the Claimant said, the Respondent believed the Claimant declined employment because she wanted to be paid in cash. The Respondent took that to mean the relationship was one of self-employment. The Claimant says that it was the Respondent who wanted to make payment in cash. I will return to this further conflict of evidence in my analysis below.

13. Once the Greenclean job came to an end, the Claimant worked only for the Respondent, except when the Respondent asked her to clean for a friend of hers who was ill, the late Dr Semmons. The Claimant carried out one single day of cleaning for Dr Semmons, for around 5 hours. One of the documents in the bundle is a statement from the late Dr Semmons' partner, a Mr Walford. He did not attend to give evidence to the Tribunal. It was suggested to the Claimant that his statement implies that she worked on more than one occasion for Dr Semmons, as it is said that the Claimant "*came to us on an ad hoc, self-employed basis*". The Claimant denies working for Dr Semmons on more than one occasion, the Respondent cannot contest that evidence, Mr Walford's comment can be read either way and therefore I accept the Claimant's account.

14. It is agreed that in addition to the one occasion cleaning for Dr Semmons, the Claimant worked three single mornings for Ms Sharpe, who also – as the Claimant says is usual – provided the required equipment. As I have already noted, she asked what the Claimant was paid by the Respondent, and paid her the same - £32 for each morning. Again, it was the Respondent who asked the Claimant to help Ms Sharpe. It is not contended that the Claimant worked for anyone else during the time she was working for the Respondent and it is agreed that the work the Claimant did for her two friends did not interfere with her work for the Respondent.

15. The Claimant originally worked 8 hours per week split equally over two mornings. Towards the end of the parties' relationship, this reduced to 4 hours per week worked on one morning. The Claimant says that it was the Respondent who decided which mornings she was to work and indeed the Respondent who changed the mornings in around 2010 or 2011 so that the Claimant worked Wednesday and Friday. The Respondent cannot say why she would have made this change, but did not gainsay the Claimant's evidence on this point, which I therefore accept. As to the originally agreed days, whilst the Claimant says the Respondent chose them, the Respondent gave evidence that it made no difference to her what days the Claimant worked as she was out at work Monday to Friday; she says that she that would guess that the Claimant told her the days. Again, there is little for me to go on in resolving this evidential conflict. I appreciate that the conversation was 20 years ago. Nevertheless, as the Respondent's evidence on the point more tentative, I prefer the Claimant's account. The Claimant says the Respondent told her during their first

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meeting that she could take a coffee break from 10.00 till 10.15 am. The Respondent said that as she was not present to enforce it, it made no difference to her if and when the Claimant took a coffee break. I do not deem it necessary to resolve that factual dispute. The actual work carried out by the Claimant did not change during the whole of the 20-year period she worked for the Respondent.

16. The Claimant was paid weekly initially, though at some point the Respondent changed this to a monthly payment, made in advance at the start of the month. She was paid cash in hand. The initial payment was £39.00 per week. The Claimant told the Respondent that she would sort out any tax and would contact HMRC. The Claimant says, and I accept, that the tax-free allowance at that point was around £4,000 and that when she spoke to HMRC she was told that she was not required to pay tax. By the time the relationship between the parties ended in 2018, she was paid £32 per week. The Respondent could not recall how the Claimant's pay was initially set. She referred to it only being right that the Claimant was paid the equivalent of what the Respondent was paying to her play group staff. That too is confirmation, to my mind, that it was the Respondent who set the rate of pay.

17. It is agreed that the Claimant was paid the same money even when unable to work because of sickness (though this only happened on a couple of occasions) and even when not working because of holiday, although in the Response it is denied that the Claimant was paid holiday pay on these occasions, because she was self-employed. The Respondent's case is essentially that the Claimant was paid when on leave because she was the Respondent's friend. It is agreed that her pay increased every time the National Minimum Wage increased. The Respondent says this was because the Claimant reminded her of it. She thought it was "the norm" that she had to pay the Claimant the National Minimum Wage even though, in her view, she was not employed. In any event, she said, she was her friend. The Claimant says that when she made a passing comment to the Respondent about auto-enrolment into a pension scheme, and received the reply, "Don't go there". The Respondent denies in her statement that this conversation took place. I do not find it necessary to resolve this factual conflict.

18. The Respondent provided any equipment, cleaning fluids and the like that was needed to carry out the work. There was no uniform.

19. Although in the Response it is said that there was no requirement for the Claimant to complete the work personally, and that she could thus appoint a substitute, it is accepted that with one particular exception she did perform all of the work personally for the whole of the 20 year period of her work with the Respondent. The exception was a period of about three years, from around 2014 until around 2017, during which Mr Johnson assisted the Claimant in her work, by carrying out the vacuum cleaning. After the Claimant experienced two electric shocks, she asked the Respondent if, when her husband collected her from work, he could do the vacuuming, and the Respondent agreed. It took about half an hour and the Claimant carried on doing other tasks at the same time. Mr Johnson was not paid, either by the Respondent or the Claimant, for his work.

20. The Claimant had a key to the Respondent's home and the code to the first alarm. This was because both the Respondent and her husband were at work when the Claimant came to clean, at least for the majority of the 20 years during which she did so. When the Respondent was away, no cleaning was carried out. The Claimant says this was because the Respondent's husband did not want her to have the code for one of the two alarms on the property. The Respondent says that it was because the Claimant did not like to use the alarm. In any event, the Respondent was only

away during the first seven years of the relationship with the Claimant for around six days per year and then not at all over the remaining twelve years.

21. It is agreed that the Claimant could not come and go as she pleased or choose which mornings she worked. There were however occasions on which the Respondent asked her to change a particular morning. The Claimant would, if she wanted a day off, call the Respondent in sufficient time to request it. The Claimant's evidence was that she "more or less always" asked for permission. She was clear that she believed she needed to do so. It was in any event agreed by the Respondent that the Claimant on no occasion said that she would not be working, without the Respondent's permission, although in the Response it is said that there was no obligation to request permission. The Respondent says that she knew the days on which the Claimant would be working and that the Claimant came in at the agreed times.

22. It is plain that the parties became friendly during the course of their relationship. This led to the Claimant looking after the Respondent's children and dogs, and doing some gardening, all with no extra pay. The gardening was, the Claimant says, a couple of days per year. She also helped when the Respondent opened up her garden to the community during the summer, again with no pay.

23. It is agreed that the Claimant's hours were reduced to one morning per week in late 2017 or early 2018. At the time the hours were reduced, the Claimant wrote a list of tasks, which appears in the bundle. Ms Firth suggested that this was the Claimant offering a reduced list of services, effectively renegotiating the arrangements between the parties. That is how the Respondent's statement reads at paragraph 18:

"In November 2017 I retired. I made the Claimant aware that I would no longer be able to afford her services. The Claimant told me that she could carry out a shortened list of services. I have attached a list she provided me with ... The Claimant provided me with this list and told me that it would take her one morning per week, instead of the usual two. I agreed to this and our new arrangement continued until July 2018".

24. In fact, the parties' agreed oral evidence was that the Respondent asked the Claimant to write down what she did on one of the mornings so that when the Claimant no longer worked on that morning the Respondent would know what needed to be done and could do it herself. For the last three months of their relationship therefore, the Claimant was paid £32.00 per week. She says she worked for the Respondent for 19½ years. The Respondent says it was 20 years almost to the day. The Claimant's last day of work was 25 July 2018.

25. Nothing was discussed in 1998 about the termination of the relationship. The Claimant says that in 2018 the Respondent told her that she was going to have to let her go and would give her until the end of July. It is accepted that the context for the discussion was that the Respondent was retiring and could no longer afford a cleaner. The Claimant says this conversation took place in the middle of June, although she accepts the Respondent indicated earlier than that that she was going to retire and that the Claimant's work would therefore be coming to an end. She says that during the initial conversation the Respondent told her she would be "redundant". In her Claim Form she says that she received notice in May 2018, and not June 2018 as stated in her evidence. The Claimant explained that this was what was written on the Claim Form by her solicitor based on the Respondent's letter of 3 August 2018. That letter was reply to the Claimant's own letter to the Respondent of 30 July 2018

in which she said that she was only given four weeks' notice. In her Claim Form she claims six weeks' notice was paid and seeks compensation for the balance of six further weeks.

26. The Respondent's evidence on timing is somewhat different. She says it was during the first week in May that she told the Claimant she would no longer require her services. Her recollection was that the gist of what she said was that she could not afford to have the Claimant any more but would carry on until the end of July. The Respondent was confident that this conversation took place on the Wednesday after the Claimant's birthday on 4 May, therefore on Wednesday 9 May 2018. It is unsurprising the Respondent would recall that date, as of course she would not have wanted to communicate this to the Claimant on her birthday and so I accept her evidence as to timing. She warned the Claimant of the need to dispense with her work at some point in late 2017 or early 2018, around the time when she retired, and confirmed this to the Claimant on 9 May.

27. The Respondent says that she gave notice to the Claimant not because it was required but because they were friends. She denies using the word "redundant". She says in her statement that the Claimant told her on this occasion that someone else had owed her money and that the other person's husband had to pay it, something the Claimant denies. The Respondent said in evidence that she wrote this down at the time the Claimant said it, but then said that it was in fact only a mental note.

28. As to the holiday year, it is agreed that this was not discussed in 1998. The Claimant says she has no idea when the holiday year runs, although in her Claim Form she says it was always the calendar year. She cannot remember in which month she started working for the Respondent in 1998. The Respondent has retained her bank statements back to 1998, and on the basis of these statements can say that the first cash withdrawal she made to pay the Claimant was on 23 July 1998. Although the bank statement was not before the Tribunal, the Respondent's evidence, and the basis for it, was clear and convincing on this point and therefore I accept it.

29. The Claimant's evidence was that she took about three weeks off for her own holidays every year and that there were another two weeks when the Respondent went away so that she could not work during those weeks either for the reasons given above. Her unchallenged evidence was that she did not take any days off work in calendar year 2018 nor were there any days she took off for which she was not paid.

30. The Respondent wrote a reference for the Claimant dated 8 July 2018, which appears in the bundle. It reads, "*To whom it may concern. //Reference for Ann Johnson. //Ann has worked for me for a very long time and it is with great regret that I can no longer afford to keep her on. I recently retired and so my income dried up. //Ann is totally trustworthy and reliable and has looked after the house for about 20 years. She has also helped out with dogs and children and other oddities from time to time.*".

Law

31. Ms Firth cited a large number of cases in her written submissions. I have considered the vast majority, though it has not been necessary for me to consider in detail, or mention below, those which make points which are both uncontroversial and not at the heart of the issues I am required to decide.

32. Dealing first with employment status, section 230 of the ERA provides:

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.

33. The classic formulation of the test to apply when determining employment status is that set out in **Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance [1968] 2 QB 497**. The first requirement is that the individual agrees to carry out work for the putative employer in return for pay, in other words an obligation of personal service. The second requirement is that the individual agrees, expressly or impliedly, that in performing that work the putative employer will exercise sufficient control over the individual so as to be his “master”. The third requirement is that the other features of the contract are consistent with it being a contract of employment. To these essential requirements, subsequent case law has added the importance of an irreducible minimum of obligation, often described as mutuality of obligations (**Carmichael v National Power Plc [1999] ICR 1226**, which is also clear authority that, in a case such as this where there is no written agreement, the agreement between the parties is to be objectively ascertained from oral exchanges at the outset of the relationship and the parties’ conduct as time went on).

34. The authorities considering these requirements are of course far too numerous to list in full. Taking the requirement for personal service first, the most important recent authority is the decision of the Supreme Court in **Pimlico Plumbers Ltd and another v Smith [2018] ICR 1511**. Albeit the Court was considering this issue on the question of whether Mr Smith was a worker, as opposed to an employee, as it made clear, the case law in relation to one is relevant in relation to the other on this question. It approved the comments in **Ready Mixed Concrete** that a limited or occasional power of substitution may not be inconsistent with a contract of service. It went on to hold that “*assistance in performance is not the substitution of performance*” and that in the case of Mr Smith who was entitled to bring in an external contractor where he lacked a specialist skill which a job required, where “*the operative continued to do the basic work, he is not regarded as having substituted the specialist to perform it*”.

35. Ms Firth also cited the decision of the Court of Appeal in the same case – **[2017] IRLR 323** – in which it was held that an unfettered right to substitute another person to do the work is inconsistent with an undertaking to do so personally, whilst a conditional right to substitute another person may or may not be inconsistent with personal performance, depending in particular on “*the nature and degree of any fetter on the right of substitution or, using different language, the extent to which the right of substitution is limited or occasional*”. One of the examples given by the Court of Appeal was that 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, whereas usually a right of substitution limited only by the requirement to show that the substitute is as qualified as the contractor to do the work will be inconsistent with personal performance.

36. As to control, this was a feature of employment relationships elaborated by the High Court in **Ready Mixed Concrete** in the way cited by Ms Firth in her written submissions:

“Control includes the power to decide the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted.

[quoting another authority] ‘what matters is lawful authority to command so far as there is scope for it and there must always be some room for it, if only in incidental or collateral matters’.

To find where the right resides one must look first to the express terms of the contract, and if they deal fully with the matter one may look no further. If the contract does not expressly provide which party shall have the right, the question must be answered in the ordinary way by implication”.

37. It is plain, not only from that decision, but also from the way in which many contracts of employment operate, that some autonomy on the part of the individual is not inconsistent with the requirement for control. All of the aspects of control mentioned by the High Court must be considered, but I do not read the decision as saying that all must be present in any individual case, at least not to the same degree.

38. This is illustrated for example by the decision of the Court of Appeal in **Troutbeck SA v White and Todd [2013] EWCA Civ 1171**, a case in which the claimants lived on a property owned by the respondent in order to properly perform their duties as caretakers/manager, there being no day to day control of what they did or how they did it and both claimants having other work elsewhere. The Court approved the decision of the Employment Appeal Tribunal that the key question was whether there was, to a sufficient degree, a contractual right of control over the worker such as to amount to employment. The key question is not whether in practice the worker has day to day control of his own work. The Court said that the legal error of the employment tribunal in that case was in treating the absence of actual day to day control as a determinative factor rather than addressing the cumulative effect of the totality of the provisions in the arrangements between the parties and all the circumstances of the relationship created by them. It added that the fact that both claimants worked elsewhere did not preclude an employment relationship, nor did the fact that the pay arrangements were informal and were operated without deductions by Troutbeck for PAYE and National Insurance.

39. As to matters which may be inconsistent with a contract of employment, it is not possible or necessarily helpful to provide a full list, but typically an individual's provision of his own equipment might be an indication that the relationship is not one of employment, as is likely to be the fact that he takes some financial risk in the work that he carries out for the putative employer.

40. I need say no more about mutuality of obligation at this point as I will deal with it in detail, as did Ms Firth's written submissions, in analysing the law on worker status below. It is though right to recognise that the mutual obligations associated with employment status are typically stated to be the obligation on the employer to provide work and pay for it and the obligation on the employee to perform it. Mutuality of obligation is not necessarily absent however just because the putative employer sometimes has no work to offer the individual. In **Clark v Oxfordshire Health Authority [1998] IRLR 125**, the Court of Appeal held that an obligation by the one party to accept and to do work if offered and an obligation on the other party to

pay a retainer during such periods as work was not offered would be sufficient to establish the mutual obligations required to found a global contract of employment.

41. Turning to how the WTR define a worker, this is set out at regulation 2:

“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.

42. My starting point for considering how the case law has dealt with worker status is the decision of the Court of Appeal in **Secretary of State for Justice v Windle & Arada [2016] EWCA Civ 459**. The individuals in that case were interpreters engaged on a case by case basis for Her Majesty’s Courts and Tribunals Service, which had no obligation to offer them work and which they were under no obligation to accept when offered. They were paid for work done, with no provision for holiday pay, sick pay or pension. The substance of the Court’s decision was that whilst the ultimate question must be the nature of the relationship whilst work is being done, it does not follow that the absence of mutuality of obligation outside those periods may not influence, or shed light on, the character of the relationship within it. It also reviewed earlier case law and cited two key authorities in particular.

43. The first was the decision of the Supreme Court in **Hashwani v Jivraj [2011] UKSC 40** in which it was held that the essential questions in identifying worker status were, *“whether, on the one hand, the person concerned performs services for and under the direction of another person in return for which he or she receives remuneration or, on the other hand, he or she is an independent provider of services who is not in a relationship of subordination with the person who receives the services. Those are broad questions which depend upon the circumstances of the particular case. They depend upon a detailed consideration of the relationship between the parties... The answer will depend upon an analysis of the substance of the matter having regard to all the circumstances of the case”*.

44. The Supreme Court in **Hashwani** was itself referring to the second decision, namely that of the European Court of Justice in **Allonby v Accrington & Rossendale College [2004] ICR 1328**, which held that *“there must be considered as a worker a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration ... [it is clear that this is not intended to include] independent providers of services who are not in a relationship of subordination with the person who receives the services”*.

45. The obvious first requirement of worker status is that there must be a contract of some description. It is unsurprising therefore that the authorities considering the definition have identified that mutuality of obligation is an essential feature of relationships of this nature. In **Cotswold Developments Construction Ltd v Williams [2006] IRLR 181**, the EAT held that the focus of the definition of worker is not on any obligation owed by the employer, except to the extent necessary to establish that there is a contract, but upon the nature of the obligation resting upon the worker. It went on to hold that, *“it does not deprive an overriding contract of such*

mutual obligations that the employee has the right to refuse work. The focus must be on whether or not there is some obligation upon an individual to work, and some obligation on the other party to provide and pay for it”.

46. Ms Firth’s written submissions referred to the EAT decision in **Hafal Ltd v Lane-Angell [2018] UKEAT/0107/17**, a case in which the claimant was expected to provide dates of availability and would then be placed on a rota, with an expectation that she would be available to provide work should she be contacted whilst on the rota. She was not obliged to provide any minimum number of dates of availability. The EAT distinguished between an expectation that she would provide work and an obligation to do so. It recognised that there may be cases where, as a result of commercial imperative or market forces, the practice is that work is usually offered and usually accepted and that such commercial imperatives or market forces may crystallise overtime into legal obligations, but in **Lane-Angell** there were express terms negating any such overarching obligations.

47. I have dealt with the requirement for personal service in the context of the law relating to employment above, but note that it is a requirement for worker status as well, as interpreted by the Supreme Court in **Pimlico Plumbers**.

48. Finally, it is clear that the Respondent must not be a customer or client of any business undertaking carried on by the Claimant. This entails considering the extent of an individual’s dependence on the party with whom she is contracting, or whether by contrast she is sufficiently at arm’s length and independent to be determined as carrying out the work of a business undertaking of which the Respondent is a customer or client. The EAT in **Cotswold Developments** held that, *“it seems plain that a focus upon whether the purported worker actively markets his services as an independent person to the world in general (a person who will thus have a client or customer) on the one hand, or whether he is recruited by the principal to work for that principal as an integral part of the principal’s operations, will in most cases demonstrate on which side of the line a given person falls”*. This guidance was approved by the Supreme Court in **Pimlico Plumbers**. Ms Firth referred to the Court of Appeal’s decision in **The Hospital Medical Group Ltd v Westwood [2013] ICR 415**, a case of a GP who carried out certain medical procedures for the company. Approving the approach in **Cotswold Construction**, he was held to be a worker on the basis that he agreed to provide those particular services exclusively to the company (although he was only restricted from working for competitors, plainly carrying out other work, including as a GP), did not offer the particular service to the world in general and was recruited by the company “to work for it as an integral part of its operations”.

49. Turning more briefly to other matters, given the Respondent’s concessions that if employed the Claimant was dismissed and by reason of redundancy, and noting that no issue was raised about the Claimant having 20 years’ continuous service if she was employed, I need only refer to section 162 of the ERA. The appropriate amount in the Claimant’s case would be one and a half weeks’ pay for each year of employment, as in each such year she would not have been below the age of 41 (section 162(2)(a)), with a maximum of 20 years to be taken into account (section 162(3)). There is no disagreement about the amount of a week’s pay at the termination of the Claimant’s relationship with the Respondent and therefore I need say no more about the law in relation to that.

50. Section 86 of the ERA sets out minimum periods of notice. There is no dispute that in the Claimant’s case the minimum period of notice, if she was employed, was 12 weeks.

51. Under the WTR, a worker is entitled, by a combination of regulation 13 and regulation 13A, to 5.6 weeks' annual leave in each leave year. When as in this case there is no relevant agreement, the worker's leave year begins on the date on which her employment begins and each subsequent anniversary of that date. Under regulation 13(9), leave to which a worker is entitled under regulation 13 may only be taken in the leave year in respect of which it is due, whilst under regulation 13A(7) any of the 1.6 weeks' leave to which regulation 13A applies may be carried forward pursuant to a "relevant agreement". Case law has developed certain exceptions to the rule laid down in regulation 13(9), namely where the worker has been told any leave taken will be unpaid, where it has been untaken because of maternity leave or sick leave, or where the worker has not had an effective opportunity to take it. The last of these exceptions derives from the decision of the Court of Justice of the European Union in **Kreuziger v Berlin [2019] 1 CMLR 34**, and requires the employer to have encouraged the worker to take the leave and to have notified her of the possibility of losing the leave if not taken by the end of the leave year.

52. Under regulation 14, where a worker's employment is terminated, there is a well-known formula for calculating compensation related to entitlement to leave where the proportion of the leave taken by the worker is less than the portion of the leave year which has expired. That formula is $(A \times B) - C$, where A is the period of leave to which the worker is entitled, B is the proportion of the worker's leave year which expired before the termination date, and C is the period of leave taken by the worker between the start of the year and the termination date.

53. Section 38 of the EA applies to all of the Claimant's complaints. Sections 38(2) and (3) provide for an award to be made (section 38(2)) or increased (section 38(3)), where at the time the proceedings began the employer was in breach of his duty to the employee under section 1(1) ERA to provide a written statement of initial employment particulars. The tribunal must, subject to subsection (5), make an award of the minimum amount and may, if it considers it just and equitable in all the circumstances, award a higher amount instead. The minimum amount is an amount equal to two weeks' pay and the higher amount is an amount equal to four weeks' pay. Subsection (5) provides that the tribunal is not bound to make an award if there are "*exceptional circumstances which would make an award or increase ... unjust or inequitable*".

Analysis

54. As the authorities make clear, my task is to find the facts as above and then determine the Claimant's status as a question of law. Given that it is rarely the case that all of the facts point in the same direction, I am required to assess the overall picture, weighing up the various relevant factors. As already made clear, there was no written agreement. I must therefore assess the oral exchanges between the parties back in 1998 and the parties' conduct as time went on.

55. I begin with Ms Firth's first question, namely whether the Respondent was the Claimant's client or customer, the Claimant delivering to the Respondent the services of her business or profession.

56. The first matter Ms Firth relied upon to support her argument that the Claimant was in business on her own account is the way in which she first came to work for the Respondent. Ms Firth submits that it must have been known that the Claimant was in business as a cleaner and available for such work generally, for the Respondent's contact at Age Concern to be able to pass on her details. She

emphasises that back in 1998 such word of mouth recommendation was the chief means of advertising one's services to the world.

57. It is not known by the Claimant, nor indeed by the Respondent, who the Claimant was said by the person at Age Concern to be cleaning for, if indeed that person was directly aware. It seems most likely that it will have been the individual the Claimant worked for at Nailstone, given that the facts as I have found them seem to me to be a comprehensive summary of the Claimant's work history. In any event, I do not accept that the simple fact that one person knew that the Claimant was a cleaner, or as the Claimant herself says that people who knew her knew she was a cleaner, takes matters very far forward. Being known, probably by a small number of people overall, to be a cleaner, a lawyer or anything else will provide no clue as to one's status. Of itself it certainly does not demonstrate that she was in business on her own account. As I have found, it was the Respondent who sought her out and, in that sense therefore, "recruited" her.

58. Ms Firth secondly sought to emphasize the other work the Claimant did in addition to the work she did for the Respondent. I am satisfied that the Claimant did not advertise her services to the world at large; there is no evidence to suggest that she did. It is correct that the Claimant said in her Claim Form that the Respondent was aware that she worked for other people but that this would not interfere with her work for the Respondent. As I have said however, the accepted evidence of the Claimant's work history is as I have summarised it in my findings of fact.

59. When first in contact with the Respondent therefore she was working an early morning shift at a supermarket for Greenclean, continuing that work for a short while after she commenced working with the Respondent. Particularly in the modern working world, it is by no means evidence that a person is in business on their own account that they have more than one source of income; there are many individuals who have two or more employment contracts with two or more employers, for example. As for the Claimant's work for Dr Semmons and Ms Sharpe, I am wholly satisfied that this does not suggest the Claimant was working – either for them or the Respondent – as an independent contractor. In a period of 20 years working for the Respondent, she worked for Dr Semmons on one occasion and for Ms Sharpe on three occasions, and did so at the Respondent's request. She did not market her services to them and although paid for the work, certainly in Ms Sharpe's case cannot be said to have negotiated, still less imposed, her own commercial terms.

60. The way in which the Claimant was introduced to the Respondent and her general work history do not in my judgment therefore suggest that she was in business on her own account. Ms Firth also submitted that both parties being individuals and the work being carried out in the Respondent's home were factors against concluding that the Claimant was a worker or the Respondent's employee. Simply as a matter of general principle, I cannot accept that to be the case. There are many situations in which individuals are employers, and whilst of course not everyone who works in another person's home will be that person's employee or worker, it cannot be a universal rule that this can never be the case. One must look to the relevant tests for assessing worker or employment status rather than the simple fact of the context in which the work is carried out.

61. Ms Firth made a number of further submissions in support of her case that the Claimant was an independent contractor.

61.1. First, she submitted that the friendship between the parties militates against an employment or worker relationship. Again, I am not persuaded that as a matter of

general principle that can be right. In any event, whilst it is clear that the relationship became a friendship, it plainly did not start out as such and the fact that it became a friendship does not necessarily mean that it cannot properly be characterised as having been established as a worker or employment relationship and thus continued as such.

61.2. Secondly, Ms Firth submitted that the Claimant's request to be paid in cash indicated that the Claimant wanted an informal relationship, not one of employee or worker. I will deal with that, in resolving the conflict of evidence between the parties on this point, towards the end of my analysis.

61.3. Thirdly, it was submitted that the Claimant having a key to the Respondent's home and at least one of the alarm codes was inconsistent with anything other than independent contractor status. I do not accept that submission either. In many instances, an independent contractor would not be given a key or alarm code for a person's home, though I accept that in some instances they would. It seems to me that this is a neutral factor in the analysis of the Claimant's status, not least because the Claimant needed the key and code to carry out her work. Furthermore, if it goes either way, it suggests, contrary to Ms Firth's submission, that the Claimant was, with that level of trust, integrated into the Respondent's "operations", though I acknowledge that this sort of language does not readily fit a domestic context.

61.4. Fourthly, Ms Firth also suggested that to find the Claimant was the Respondent's worker or employee would in effect destroy that type of cleaning industry. I will return to that also towards the end of my analysis.

62. Ms Firth further submitted that the Claimant dictated the terms on which she would carry her out work for the Respondent during their discussions in 1998 and again when the "revised services", as Ms Firth put it, were presented to the Respondent in late 2017 or early 2018, evidenced by the written list of tasks the Claimant prepared. I have found as a fact that it was the Respondent who showed the Claimant the work that was required – albeit in general terms – and set her hours of work, the days on which the work would be carried out and the rate of pay. As for the "revised services", I have found as a fact that the Respondent asked the Claimant to write down the tasks she normally did on the day she would no longer be working, so that the Respondent could know what she herself would then be required to do. For these reasons, I do not accept the submission that either the initial or revised basis on which the Claimant carried out her work demonstrates that she was acting as an independent contractor.

63. For all of the reasons I have given therefore, I conclude that the Respondent was not a client or customer of the Claimant and that the Claimant was not working for the Respondent in any business or professional capacity. In addition to rejecting the Respondent's arguments summarised above, I note that the Claimant was economically dependent on the Respondent for a substantial period of time, and note the Claimant's argument, which has some force, that had she been working for the Respondent in a business capacity she would certainly not have agreed to payment at the level of the National Minimum Wage.

64. It must follow therefore that I find the Claimant to have been, at least, a worker for the purposes of the WTR. It is important, in analysing the case in the order suggested by Ms Firth, that I now give proper consideration to the various factors which the authorities have indicated are indicative of worker status. As I have noted, these are that there must be a contract and therefore some mutuality of obligation, an obligation of personal service, and that the individual works under the other's

direction – what some of the authorities referred to as subordination. The authorities also refer to a worker being an integral part of the principal's operations.

65. I am in no doubt that there was mutuality of obligations between the parties. To borrow the language of the decision in **Cotswold Construction**, there was clearly some obligation on the Claimant to work and some obligation on the Respondent to provide work and pay for it. The Claimant was not free to come and go as she chose; she did not perform the work as and when she was able. It is correct that she largely determined herself how she would carry out the cleaning work, something I will return to below in a different context. Nevertheless, contrary to Ms Firth's submissions, the facts as I have found them show that the Claimant was not free to choose the time when, nor of course the place where, she carried out her work, nor was she free to choose in the general sense the work she carried out. The general nature of the work, the place of work, and the hours of work were established by the Respondent at the outset. As things turned out, whilst the Claimant did on occasions take a break from her work, this was always with the prior agreement of the Respondent. As the Respondent herself said in oral evidence, she expected the Claimant to come to work on the agreed days. Both parties had flexibility to change the days of work, but in the Respondent's case she would simply notify the Claimant; in the Claimant's case this in effect required the Respondent's permission.

66. The facts show that in practice the Respondent did not fail to provide the Claimant with work, except when the Claimant took a break with permission. It is correct that there were occasions when the Claimant did not work because the Respondent was away on holiday. Those occasions were however few and far between and even during those periods the Claimant was paid. In the language of the Court of Appeal in **Clark**, the Claimant was effectively therefore "retained" by the Respondent during those brief periods. Ms Firth placed considerable reliance on **Hafal**, a case in which there was no more than an expectation that the individual would carry out a certain amount of work. In the present case, there was clearly an expectation that the Claimant would work, but there was more than that. Unlike Ms Lane-Angell, she was not just available for work and expected to carry it out if called upon. Rather, there were regular, agreed hours which the Claimant was only excused from with permission. She was therefore in my judgment obliged to do the work from the outset. Alternatively, it can be said that the expectation that she would do so crystallised into an obligation. There is no doubt that the Respondent needed the work to be done.

67. Having established that there was mutuality of obligation, the next question is whether there was personal service. I am in no doubt that there was. It was inherent in the arrangement that the Respondent would not simply have let anyone into her home to clean, not least because it would matter a great deal who had possession of the key and knew the alarm code.

68. I have noted the circumstances in which Mr Johnson carried out some work at the property. That in no sense diminished the Claimant's obligation to provide personal service, not least because it was not known at the outset of the relationship that this would be required. In any event, Mr Johnson was known to the Respondent, carried out the work with her consent, did so for a relatively short period in the overall context of the relationship, was present only for a small part of each of the two working days, and whilst he did the vacuum cleaning the Claimant carried on with the rest of her work. This seems to me to be squarely within the sort of circumstances mentioned in **Pimlico Plumbers**, namely assistance in performance rather than substitution, where the "operative" continued to do the basic work. If it were more

than that, at most it reflected a limited or occasional power of substitution not inconsistent with a requirement for personal service.

69. As to whether the Claimant carried out her work under the Respondent's direction, broadly, for the reasons I have given, I find that she did. I will return to that question in more detail when considering the question of control for employment purposes. It is sufficient to repeat here that the broad nature of the work, when it was to be done, where it was to be done, and indeed changes to those arrangements, were set by the Respondent and not dictated by the Claimant. I have already indicated that the concept of being integrated into the Respondent's "operations" is not readily translated into the domestic context. It does not seem to me right to say that this defeats the Claimant's claim to worker status, and in any event as I have also indicated, the level of trust placed in the Claimant shows an appropriate degree of integration in this case.

70. The Claimant was thus in a relationship of worker with the Respondent. The next question is whether she was also the Respondent's employee. The crucial question here is that of control. I have made clear that it was the Respondent who set the Claimant's pay, hours and times of work. She also set the frequency at which the Claimant was paid. The days on which the Claimant worked and the frequency with which she was paid were also changed at the Respondent's instance and it was the Respondent who in late 2017 or early 2018 changed the Claimant's hours from eight per week to four.

71. There was no detailed stipulation of the duties required of the Claimant, either during the initial discussions between the parties or subsequently, except when the Respondent would leave the Claimant an occasional note, which I accept does not determine the issue either way. As the case law makes clear however, there does not have to be a complete absence of autonomy or independence, or day to day control, in order for an individual to be an employee. It is in the nature of many employment relationships that the precise way in which work is performed is left to the individual to determine within overall parameters. That is what happened in this case, and indeed what was agreed at the outset. The work to be done was certainly established overall by the Respondent, as was the place at which it was to be done and the times at which it was to be done.

72. All of that in my judgment is consistent with an employment relationship. The further question therefore is whether the other features of the relationship were consistent with employment. In my judgment they were. The Claimant provided no equipment or replacement equipment. She took no financial risk. Albeit the Respondent says it was simply a reflection of their friendship, the Claimant was paid when she took leave from work. That appears always to have been the case and therefore, as I have indicated, would not have been on the basis of friendship at the outset of the relationship even if a friendship developed during it. The Claimant was also paid as normal on the rare occasions that she was unable to work because of sickness. It is also not insignificant that throughout most of the period of her relationship with the Respondent, the Claimant's pay was in accordance with the National Minimum Wage. As the Claimant submitted, that is more indicative of at least worker status than it is of an independent contractor. The Claimant also says the fact that she was given notice shows that she was in an employment relationship with the Respondent as otherwise she could have been finished on the same morning; of itself it is not a determinative factor, but it is certainly not inconsistent with the conclusion that I have reached overall.

73. The reference provided by the Respondent does not to my mind indicate the position one way or the other. It would not be unusual for someone who had engaged someone operating a cleaning business to write something of that nature. Similarly, I do not attach much weight to the Respondent's concession that had the Claimant accepted a more formal relationship she would have been employed, though it is indicative to my mind of the reality of the relationship. Finally, as made clear for example by the Court of Appeal in **Troutbeck**, the way in which the Claimant was paid and the fact that she was not paid through a PAYE arrangement is not a factor which outweighs all the others pointing to an employment relationship.

74. That leaves me to deal with two further matters. The first is Ms Firth's submission that finding the Claimant to have been the Respondent's worker or employee would have disastrous effects for this type of cleaning industry generally. I do not accept that submission. The individual arrangements for the cleaning of a person's home are no doubt many and varied, such that each case would have to be looked at on its own facts. In many instances I expect that there are individual cleaners who actively market their services to the world, have many clients, and charge commercial rates or at least something more than the National Minimum Wage. Ms Firth sought to equate the Claimant's work to that of a window cleaner. That does not seem to me to be an appropriate comparison. One would normally expect a window cleaner to have many clients and to market their services accordingly, and again one would expect a window cleaner to charge more than the National Minimum Wage.

75. The second and final issue to deal with is the outstanding conflict of evidence between the parties, namely whether the Claimant in effect refused an employment relationship because she wanted to be paid in cash. The first point to make is that the fact that someone wants to be paid in cash, and indeed the fact that they are, does not automatically mean that there is no employment relationship. As to whether this is what the Claimant said, or whether she requested a "written agreement" as she put it and the Respondent never got back to her, it seems to me I can only resolve that conflict of evidence – which is also potentially relevant to remedy – on the basis of the parties' evidence generally.

76. On balance I prefer the Claimant's account, for two reasons. First, the Respondent's evidence recounted above is somewhat tentative, in that she says she "believes" the Claimant wanted to be paid in cash. Secondly and more importantly, whilst I must make clear that I am in no way suggesting that the Respondent misled the Tribunal in any respect, I did find her evidence overall less convincing than that of the Claimant. I have noted that the Claimant's case as to the notice she was given by the Respondent to end the relationship differs between her evidence presented to the Tribunal and what was set out in her Claim Form, though I have also accepted her explanation that what was stipulated in the Claim Form was obtained by her solicitor from the Respondent's letter of 3 August 2018, which seems a wholly plausible explanation. The Respondent's evidence on the other hand was unconvincing in at least three respects.

77. First, I have referred to the inconsistency between her statement that she did not know what a cleaner could do and her further statement that had the Claimant been employed she would have stipulated the precise requirements for cleaning. Secondly, I have noted her evidence as to how the Claimant came to write her a note of the tasks she carried out on the day she would no longer be working when her hours were reduced. The Respondent's written statement refers to the Claimant setting out a list of "revised services", whereas in her oral evidence the Respondent accepted that it was a note written to help her determine the work she would have to do herself once the Claimant was only working one day a week. Thirdly, the

Respondent gave oral evidence that she wrote down what the Claimant said about claiming money from her on her last day of work, but then conceded it was only a mental note. These are in many ways small things to go on, but where I have to resolve an important conflict of evidence and have no other indication either way, it seems to me that the general greater reliability of the Claimant's evidence must lead me to prefer her account. I therefore conclude that she requested a written agreement and – though I do not impute any improper motive to the Respondent – it was never attended to.

78. Having concluded that the Claimant was employed by the Respondent, and therefore of course a worker as well, I turn to the question of remedy.

79. It is agreed that the Claimant was dismissed by reason of redundancy. She is therefore entitled to a statutory redundancy payment. The Respondent did not seek to argue that the Claimant did not have 20 years' continuous service. There was no claim by the Claimant for compensation for any financial loss she has sustained attributable to the non-payment of the redundancy payment. The amount of the redundancy payment due to the Claimant is therefore £32 x 20 x 1.5, that is £960.

80. As to the claim for notice pay, it is not the Claimant's case that she was not given notice at all. Rather, she says the conversation during which the Respondent told her she was no longer required took place in June 2018, whereas the Respondent says that it took place in early May 2018. For the reasons I have given in my findings of fact, namely that the Respondent specifically recalls not wanting to give notice to the Claimant on her birthday, it seems far more likely to me that the Respondent is correct on this point. The Claimant was therefore given notice on 9 May 2018. Her last day of work was 25 July 2018, 11 weeks later. It is accepted that she should have been given 12 weeks' notice. Her compensation for breach of contract is therefore one week's pay, namely £32.

81. As to annual leave, again for the reasons already given it seems to me that the Respondent's recollection as to when the Claimant started employment is highly likely to be accurate. There was no relevant agreement for these purposes. On that basis, I find that the holiday year began on the date the Claimant started employment and each anniversary of that date thereafter. Neither party can be entirely precise and therefore in my judgment it can only be concluded that the holiday year began on 23 July and ended on 22 July each year. That would mean that the Claimant did not accrue any entitlement to annual leave during the holiday year commencing 22 July 2018, as she left the Respondent's employment only three days later.

82. As I have deliberated further however since the Hearing, it is clear to me that this is not the end of the matter. It is plain that the Respondent did not believe that the Claimant was entitled to paid annual leave, and she therefore cannot possibly be said to have encouraged the Claimant to take it or to have notified her of the possibility of losing it if it was not taken by the end of the leave year. In accordance with the decision in **Kreuziger** therefore it cannot be said that the Claimant had an effective opportunity to take outstanding leave, if there was any, in holiday year 23 July 2017 to 22 July 2018, such that she would have been entitled to carry forward any outstanding leave to which she was entitled under regulation 13 of the WTR from that year into the new holiday year commencing on 23 July 2018. It cannot be right for the Claimant to be deprived of compensation in respect of any such leave which was thus carried forward, nor can it be right for me to simply overlook the point, particularly given that the Claimant is unrepresented.

83. The Claimant said in unchallenged evidence that she took no leave in calendar year 2018. What I do not know is how much leave she took and was paid for in the period 23 July to 31 December 2017. I am therefore unable at this point to determine the compensation due to the Claimant in this respect. I very much hope that the parties are able to deal with this matter between themselves, though if they are not able to agree the matter within 28 days of the date on which this Judgment is sent out, they will have to inform the Tribunal and a Remedy Hearing will have to be arranged. To assist the parties, the compensation due to the Claimant, if any, can be calculated as follows:

83.1. The starting point is the pro-rata equivalent of 20 days (the decision in **Kreuziger** applies only to leave under regulation 13 WTR), namely 8 days. That was the Claimant's leave entitlement under regulation 13 for holiday year 23 July 2017 to 22 July 2018.

83.2. There should be deducted from this amount any paid leave the Claimant took in the period 23 July to 31 December 2017.

83.3. The resulting amount, if any, should be multiplied by the Claimant's daily pay of £32.

84. There are two further matters to deal with on remedy. The first is that the Claimant mentions in her witness statement an increase in compensation because of failure to comply with the ACAS Code of Practice. The Code does not apply to a redundancy dismissal and therefore no uplift can be awarded.

85. The second is whether the Claimant's monetary awards should be increased under section 38 of the EA. Based on the conclusions above, the Claimant was entitled to written particulars of employment as the Respondent's employee. I have found in her favour and made an award in respect of claims to which section 38 applies. I must therefore increase the awards by two weeks' pay unless there are exceptional circumstances which would make an increase unjust or inequitable. The Respondent's only explanation for failure to provide particulars was that she did not think the Claimant was entitled to them. In the face of that explanation and particularly given my finding of fact that the Claimant requested a "written agreement", I cannot regard it as unjust or inequitable to increase the award by the minimum amount, which in this case is £64.

86. I also find it just and equitable to increase the awards by the higher amount. The Claimant was deprived of written particulars of employment which, if they had been provided as should have been the case, would in all likelihood have prevented her having to pursue this claim to retain the compensation to which she was entitled following the termination of her employment. I do not doubt that the Respondent's genuine belief was that the Claimant was not employed, but in these circumstances and given that the Claimant was economically dependent on the Respondent, it is just and equitable to compensate her for the Respondent's failure to provide written particulars accordingly. Her compensation is therefore increased by £128 overall.

87. In summary, the Claimant's remedies are as follows:

87.1. She is entitled to a statutory redundancy payment of **£960**.

87.2. The Respondent is ordered to pay to the Claimant as compensation for breach of contract, the sum of £32, increased pursuant to section 38 of the EA by £128, making a total of **£160**.

87.3. In respect of compensation under the WTR for untaken annual leave, I urge the parties to reach agreement on the basis set out above within 28 days of the date on which this Judgment is sent to them, failing which they should notify the Tribunal that a Remedy Hearing is required.

Employment Judge Faulkner

Date: 1st July 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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