



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Roberts

**Respondent:** Medic 1 Direct Ltd

**Heard at:** Mold

**On:** 14 February 2018

**Before:** Employment Judge S Davies (sitting alone)

## Representation

**Claimant:** in person (accompanied by her son)

**Respondent:** Ms J Wilson-Theaker, counsel

# RESERVED JUDGMENT

It is the decision of the Employment Judge sitting alone that the Claimant was a 'worker' and her claim for holiday pay is upheld.

# REASONS

## Applications

1. At the outset of the hearing I dealt with an application by the Respondent under Rule 19 of the Employment Tribunal Rules of Procedure 2013 for reconsideration of the rejection of its response under Rule 17, for failing to use the prescribed ET3 form. The reconsideration and an application for an extension of time within which to submit the response were granted, for reasons given orally at hearing

## Hearing

2. This case was originally listed for a one-hour hearing, to deal with a claim for unpaid holiday pay. It was not until the receipt of the Respondent's response that it became apparent that the question of employment status was in dispute. Unfortunately, because the complexity of the case was not identified at an earlier stage and because of the rejection of the response, no directions were issued, with regard to preparation of a bundle and witness statements, until I reviewed the case file only a few days prior to the hearing.

3. The parties exchanged witness statements on 13 February 2018 and both attended the hearing with separate bundles of documents; neither of which had been agreed. There was some disagreement between the parties about the inclusion of certain documents; I determined that all documents would be adduced into evidence for the reasons given orally at the hearing.

#### **Interpreter**

4. The Claimant requested to give her evidence in Welsh and Mr Owen attended as interpreter, however, despite reassurance that she was entitled to give her evidence in Welsh, the Claimant elected to answer questions in English.

#### **Evidence**

5. The Respondent adduced two written witness statements; from Mr Stephen Knight, Head of Operations and Mrs Laurel Knight, Director. Only Mr Stephen Knight attended the tribunal to give evidence.
6. The Claimant submitted a short, written statement.

#### **Submissions**

7. I heard oral submissions from both parties and the Respondent referred me to a bundle of case law authorities. Additionally, I raised the CJEU judgment in **Fenoll C316/13** with the Respondent's representative for her comment

#### **Claimant's health**

8. The Claimant informed the Tribunal that she is pregnant and indicated at the outset of the afternoon that she did not feel able to remain in the Tribunal until 4:30pm. I checked with the Claimant that she was well enough to continue and she confirmed that she was able to cross-examine Mr Knight and to make submissions.
9. As a result of her disclosure, and with a view to allowing the Claimant to leave the Tribunal at the earliest opportunity, I determined to reserve my decision.

#### **Factual background**

10. The Claimant was engaged to provide medical services for the Respondent from August 2016 to September 2017. There is a dispute as to how the engagement terminated but I do not need to resolve that for the purposes of determining the claim.
11. The Respondent provides first-aid cover and patient transportation at events (for example, sporting events) and also had a contract to provide cover at land registry buildings; its first-aid teams are deployed to work all over the UK.
12. The Claimant was paid £7.25 per hour for medical services (less than the National Living Wage for workers aged 25 and over of £7.50 from April 2017) and £10 per hour for patient transfers.

13. Mr Knight asserts that the Respondent engages around 40 contractors providing medical services and employs 8 employees in administrative, operational and mechanic roles (paragraph 2 of his witness statement).

#### Documentation

14. The parties signed an undated contract (the 'contract') for services headed 'Independent Contractor Agreement' (page 1-7 of the Respondent's bundle) which describes the Respondent as 'customer' and the Claimant as 'contractor'. Neither party could confirm the date on which the contract was signed. The relevant clauses are set out below (my emphasis in underline):

##### Services provided

*1 the Customer hereby agrees to engage the Contractor to provide the Customer with the services (the "Services") consisting of: medical services*

*2 the Services will also include any other tasks which the parties may agree on. The Contractor hereby agrees to provide such services to the Customer.*

...

##### Performance

*6 the parties agree to do everything necessary to ensure that the terms of this Agreement take effect.*

...

##### Compensation

*8 for the services rendered by the Contractor as required by this Agreement, the Customer will provide compensation (the "Compensation") to the Contractor which is subject to change, different rates may apply.*

...

*10 the Compensation as stated in this agreement does not include Value Added Tax. Any Value Added Tax required will be charged to the Customer in addition to the Compensation.*

*11 the Contractor will be responsible for all income tax liabilities and national insurance or similar contributions relating to the Compensation and the Contractor will indemnify the Company in respect of any such payments required to be made by the Company.*

(I note that despite its capitalisation, 'Company' does not appear to be a defined term in the contract)

##### Provision of extras

*13 the Customer agrees to provide, for the use of the Contractor in providing the Services, the following extras:*

- *accommodation where applicable*
- *vehicles where applicable*
- *appropriate kit and consumables for work purposes*

##### Reimbursement of expenses

14 in connection with providing the Services hereunder, the Contractor will only be reimbursed for the following:  
any valid expenses incurred, e.g. fuel or accommodation, provided there is a valid receipt and prior written consent from a manager.

...

Non competition

19... the Contractor will not, during the continuance of this Agreement or within five years after the termination of this Agreement, be directly or indirectly involved with a business which is in direct competition with the particular business line of the Customer...

Capacity/independent contractor

23 in providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee...

Assignment

29 the Contractor will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without prior written consent of the Customer.

15. As well as signing the contract, the Claimant was provided with a paper copy of the Respondent's staff handbook (the 'handbook' - Claimant's document 3), which Mr Knight confirmed was issued to all staff (both those the Respondent viewed as employees and those viewed as self-employed). It is evident from the content of the handbook that it is primarily aimed at the 'contractors' providing medical services.
16. Relevant extracts from the handbook are set out below (my emphasis underlined):
17. The front page reads: "Welcome to the Medic 1 team  
Our staff make us what we are, we are glad you have chosen to join us"

**Welcome to Medic 1**

Medic 1 is a private ambulance service providing medical event cover, transfer services and training. We are delighted to have you as part of our team...

The quality of our service depends on the quality and commitment of the team and the staff who work for us. We are only able to meet our high standard by continuing to develop and maintain a well-trained, competent and high quality team of staff. Medic 1 offers a variety of opportunities for further training and development.

The information included in this handbook is vital to you, providing guidance about the standard we expect. If any situation arises where you are not able to find advice or guidance within this handbook then please contact your manager who will ensure you get the advice you need.

**Invoicing**

You will be required to submit an invoice submission form for work done.

**Policies and procedures**

As a member of staff you are expected to follow the organisation's policies and procedures. All are available to read at the head office.

**You (sic) Roles and responsibilities**

Medic 1 ambulance service provides immediate care to members of the public. Your task will be agreed upon your employment.

**Tasks outside normal range of duties**

You must not undertake any task that you have not trained to do. Doing so will incur disciplinary procedure....

**Recording/reporting information**

All patients treated must have a patient report form (PRF) filled in, this is vital. Fill in as much information as you have....

**Kit bags**

All kit bags will be stocked appropriately before they are sent out. However we recommend that you double check your kitbag,... If you should find something is missing you can restock it before you go out.

If you use anything from the kit bags whilst they are out on duty then we ask that you restock whatever it is that you have used. There is a checklist of contents that should be in the kit bags, only place what is on the list in the bags and nothing more. You can restock from the chest of drawers located in the medical centre...

**ID cards**

Before you start working for Medic 1 you will be issued with an ID card. This will have your name and photo on it, state that you work for Medic 1 and a contact number.

**Provision of equipment and protective clothing**

Staff are expected to maintain a clean and tidy appearance at all times. A uniform is issued to all staff that consists of a green shirt, green ambulance trousers, high visibility waistcoat and high visibility coat.

Sensible black shoes with a good grip should be worn whilst on duty and no jeweler. It is advisable that nails are worn short. Acrylic and gel nails are not appropriate.

All staff will be provided with protective equipment such as gloves and aprons as appropriate. Gloves should be used at all times when in contact with patients.

**Codes of conduct**

A code of conduct enables organisation to provide clear boundaries for staff in terms of what is and is not acceptable behaviour.

... Breaches of the code of conduct will normally result in disciplinary action being taken. Serious breaches may result in dismissal.

**Receiving gifts and hospitality**

A member of Medic 1 staff may not accept money or gifts from service users or their relatives.

**Confidentiality**

*...Any breach of confidentiality may be regarded as misconduct and the subject of serious disciplinary action.*

**Staff conduct**

*... Medic 1 expects all staff:*

*to show courtesy and respect to others at all times*

*to be punctual*

*to take care over personal appearance*

*to carry their identity card at all times during provision of service*

**Appearance and personal hygiene**

*Uniform is provided and should be worn at all times*

*Staff should wear appropriate footwear*

*Nails should be neat, clean, tidy and kept short. Long nails damage protective gloves and can damage frail or sensitive skin. Gel and acrylic nails are not appropriate.*

*All jewellery must be removed*

*Long hair must be tied back*

*Staff should be aware of their own personal hygiene at all times. When providing care to service users, you are in very close proximity to them*

**Advice regarding social networking**

*... The way in which staff present and conduct themselves on social networking sites can have an impact on the public perception of Medic 1. It is recommended that staff take adequate precautions when using social networking sites/applications, both vetting material that would could connect them (through their own profile and information added about them) through the use of appropriate security settings.*

*... It is suggested that staff do not identify their employer on social networking sites as this could directly link their behaviour outside of work with the reputation of Medic 1.*

*Failure to follow this guidance or where the use of social networking sites brings Medic 1 into disrepute may result in disciplinary action.*

**Grievance procedure**

*If you have any concerns you should raise them with your manager, who will endeavour to deal with them promptly and appropriately*

18. Mr Knight was responsible for drafting additional policies issued to contractors covering driving breaks (document 11 Claimant's bundle) and using mobile phones when driving (document 12 Claimant's bundle).
19. When the Claimant started work with the Respondent she did not have any first-aid qualifications; she was trained by the Respondent in basic first-aid, at no cost to the Claimant. The Claimant also completed an induction of one day's duration. It was open to the Claimant to pay for further training via the Respondent if she wished to develop her knowledge and skills; the Respondent offered her further training at a discounted rate.
20. The Respondent referred me to an email exchange following termination of the Claimant's engagement, at page 19; submitting that in the exchange, the Claimant does not dispute Mr Jonathan Knight's assertion

that she was free to accept or decline work as she wished. I do not consider the omission counter this point to be conclusive evidence of the arrangements for offering and accepting assignments; the Claimant is not a lawyer and it would be unrealistic and unfair to infer from that exchange that she agreed with Mr J Knight's position.

21. It is agreed that work was allocated to contractors by Mrs Knight using Facebook messenger. Mr Knight does not become involved in the allocation of work; he explained that he dislikes Facebook and makes limited use of messenger. All contractors were members of a messenger group entitled 'happy chat'. Mrs Knight created sub groups for specific events and added individuals available for work into those event-specific subgroups.
22. Mr Knight asserts that jobs were offered on a 'first come first served' basis, which was disputed by the Claimant. The Claimant asserts that it was not until after she had been added to an event subgroup that she would be asked whether she was available to do that work. The Claimant asserts that if she refused the work, that she would be contacted by direct messenger message from Mrs Knight to persuade her to work and if she did not, she would be penalised, in that no other work would be offered to her for a week or so. Mrs Knight did not appear to give evidence and I accept the Claimant's account as reliable; it appears in reality, there was an expectation on part of Respondent that the Claimant would carry out some work.
23. The Respondent provided expenses for hotel accommodation and subsistence for overnight stays and a fuel card to use with company and personal vehicles. When staff were required to transport patients, this was done in ambulances owned by the Respondent. The Claimant was covered by vehicle insurance obtained by the Respondent. The Respondent had public liability insurance but there was no requirement in the contract for the Claimant to have her own personal public liability insurance (which she did not have).
24. The Claimant was provided with a uniform to wear including T-shirts and coat or vest bearing the Respondent's logo and green trousers. Mr Knight asserts that green coloured uniforms were selected so that staff could easily be identified by members of the public requiring first-aid assistance. The Claimant was also provided with a kit bag of medical equipment including the Respondent's products. Mr Knight asserts that many contractors bought their own uniform and kit bag with medical equipment but accepts that this was not the case for the Claimant. The handbook suggests that uniform and kit is provided by the Respondent and obliges contractors to wear uniform. The contract refers to provision of kit.
25. Both parties agreed that once a contractor had agreed to cover an event, the expectation was that they would cover it in its entirety. The Claimant asserts that she would not be able to simply leave a shift midway through, additionally she noted that this would not be practical for events which were located far from her home. It is agreed that the Claimant always provided personal service for the shift she agreed to work and never attempted to provide a substitute. On one occasion the Claimant became

unwell during the course of a shift and a substitute was provided, arranged by the Respondent.

26. Mr Knight described a situation where another two contractors (a wife and husband) were unable to fulfil a shift they had committed to. These contractors suggested substitutes who were acceptable to the Respondent, on the basis that they had current DBS checks and the requisite first-aid training and that the contractors vouched for the substitutes. Mr Knight confirmed that a substitute would need DBS clearance and first-aid training and that the Respondent would not just 'call somebody off the street' to substitute.
27. The Claimant was able to work elsewhere without restriction from the Respondent. The Claimant described work for the Respondent as having a seasonal nature in that it was quieter over the Christmas period. The Respondent agreed that it could not provide work year round. Due to the quiet period between November 2016 and February 2017, the Claimant obtained employment at Anglesey Airport.
28. The Claimant submitted the Respondent's own pro forma invoices to the Respondent for the hours she worked. The pro-formas included the contractor's 'Staff number' (eg page 66); in the Claimant's case '1082' which was also reflected on payment slips (eg page 119). The Respondent asserts that there was no requirement to use pro-formas; the Claimant disputes this and in any event, she always used them.
29. Payment was made on a monthly basis by the Respondent and was made gross, without deductions for income tax and National Insurance. The contract provides that the Contractor will be responsible for tax and National Insurance payments. The Claimant asserts she did not read the content of the contract but discovered this fact from a colleague in or around October/November 2016. The Respondent acknowledges that due to the level of payments received by the Claimant over all, it is possible that her income did not exceed her personal allowance for income tax purposes.
30. There is a dispute over whether the Claimant was subject to disciplinary and grievance procedures. The handbook suggests that disciplinary procedures apply to contractors providing medical services (eg under the heading 'tasks outside normal range of duties').
31. The Claimant raised a complaint or grievance during the course of her engagement with the Respondent. It related to a colleague taking photographs of her son, when he was asleep during an overnight stay whilst working for the Respondent, and putting them on Facebook. The Respondent dealt with the complaint/grievance, obtaining witness statements from the Claimant and her son and requiring the colleague to delete the photographs. There is a dispute as to whether this amounts to the Respondent dealing with a grievance or just a complaint. It appears to me splitting hairs to suggest there is a real difference; the process described by the parties amounts to the resolution of a grievance.



32. The Claimant did not have a company email account and used her personal Hotmail account for communications regarding work.

### Status – the law

33. The Claimant's assertion that she is entitled to be paid annual leave under the Working Time Regulations 1998 (WTR) is dependent on the Claimant demonstrating she has the legal status of worker (or employee).

34. The Respondent resists the claim contending that the Claimant, was genuinely self-employed. The Respondent asserts that there was a lack of mutuality of obligation; there was no obligation upon the Claimant to accept work if she did not wish to and that she was able to work elsewhere.

### The true nature of the agreement

35. Before considering the tests applicable to employee and worker status, I note that a Tribunal is not bound by the label the parties attach to their relationship; although that can be a relevant factor. In **Quashie v Stringfellows Restaurants Ltd (2013) IRLR 99** Elias LJ said (para 52):

*“It is trite law that the parties cannot by agreement fix the status of their relationship: that is an objective matter to be determined by an assessment of all the relevant facts. But it is legitimate for a court to have regard to the way in which the parties have chosen to categorise the relationship, and in a case where the position is uncertain, it can be decisive”*

36. In **Autoclenz v Belcher [2011] UKSC 41** it was held that in some circumstances a Tribunal may disregard the terms of a written agreement where it did not reflect the parties' true intentions. The Supreme Court emphasised the disparity in bargaining powers of the parties in a working relationship, as compared to a commercial contract; in this context, the Tribunal should be '*realistic and worldly wise*' in its approach. There is no requirement on Claimants to show that there was a sham intention to misrepresent the true nature of the parties' respective obligations. Where it is suggested that the written terms do not accurately reflect what is agreed, the essential question is: '*what was the true agreement between the parties?*' This is to be determined by considering all the circumstances of the case, of which the written agreement is one part.

### Definition of an employee

37. The relevant definition is at Section 230 ERA; an 'employee' is "*an individual who has entered into or works under (or where the employment has ceased, worked under) a contract of employment*".

38. Section 230(2) provides that a 'contract of employment' means "*a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing*".

39. An important legal distinction exists between a “contract of service” and “a contract for services”. The latter being one where an individual provides services to a client as an independent contractor. The task of identifying what kind of contract exists involves consideration of a mixed question of fact and law. There is no single formulated test; but three questions are set out in **Ready Mix Concrete (South East) Ltd v Minister of Pensions and National Insurance 1968 2 QB 497–**
- a. whether an agreement exists for the worker to provide their own work and skill (“personal service”) in return for remuneration (“mutuality of obligation”);
  - b. whether there is “control” of the worker by the Respondent such that they should be considered an employee; and
  - c. whether other provisions of the contract are inconsistent with the existence of a contract of service or employment.
40. There is no doubt that a contract existed between the parties in this case; there is dispute as to what kind of contract it is. Case law provides that personal service, mutuality of obligation and control are the irreducible minimum which must be present in order for a contract of employment to exist.
41. The fact that there is no obligation on the putative employer to provide work and no obligation on the putative employee to accept work, even if offered, is normally fatal to a finding of employee status.

### **Worker Status**

42. The statutory status of ‘worker’ indicates a person with important statutory employment rights, albeit not as extensive as those available to an employee.
43. A worker is defined in Section 230(3) ERA as *“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 a customer of any profession or business undertaking carried on by the individual”*.
44. For the purposes of this case, I note that this definition of a worker is also found at Regulation 2(1) WTR.
45. A worker is a category of individual whose relationship might be one of self-employment but nonetheless contains features that require the provision of statutory protections. Both the worker and the true independent contractor provide services pursuant to a contract ‘for services’ rather than ‘of service’ but the worker has the benefit of certain protections and rights that the individual in business on their own account does not. Whether there is a relationship of subordination assists in

distinguishing a worker from those genuinely on business on their own account.

46. With reference to the statutory test, there are three questions to address:

- a. was there a contract under which work was performed?
- b. did the contract require the Claimant to provide personal service?
- c. was the Claimant carrying on a profession or business undertaking, and if so who was her client or customer?

47. The CJEU confirmed in **Fennol C316/13**, that the concept of a worker may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to EU law. The Working Time Directive 2003/88/EC is relevant, as any interpretation of the term worker for the purposes of working time claims must be consistent with EU law. According to the CJEU, the term worker must be defined in accordance with objective criteria that distinguish the employment relationship by reference to the rights and duties of the persons concerned. Any person who pursues real, genuine activities on behalf of another, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a worker. The essential feature of an employment relationship is:

*‘... for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.’*

## Conclusion

48. The only claim pursued is for holiday pay; accordingly, my focus is on the statutory test for worker status.

49. There is no question that a contract for work exists. The Respondent submits there was no requirement for personal service and in doing so, refers to clause 6 of the contract which provides that the parties must ‘do everything necessary to ensure the terms take effect’. However, that clause should be read in conjunction with clause 1 which engages ‘the Contractor’ and clause 29 which acts to prevent the assignment of obligations under the contract without prior written consent of the Respondent. Mr Knight explained the circumstances in which a substitute would be approved as mentioned above; they would ‘not call anyone off the street’. On the only occasion a substitute was provided for the Claimant she was unwell and unable to perform the medical services and it was down to the Respondent to find a substitute.

50. I note the guidance in paragraph 84 of **Pimlico Plumbers v Smith (2017) ICR 657** which describes the way in which varying degrees of conditionality attached to substitution affect conclusions on the requirement or not for personal service. Clearly the Claimant did not have an unfettered right to substitute. The nature and degree of the right to

substitute was controlled by clause 29 of the contract and in practice would only operate where the Claimant was unable to carry out the work herself; which scenario **Pimlico Plumbers** suggests is consistent with the obligation of personal service.

51. I reject the submission that the Claimant was not required to provide personal service. The fact is that she never provided a substitute herself; the only occasion of substitution when she became ill was arranged by the Respondent.
52. I am mindful that I should consider the true nature of the agreement between the parties; the written contract between them being only one factor to be considered. There is a stark contrast between the wording of the contract and that of the handbook.
53. Mr Knight accepted that the handbook was issued to all staff. It clear from the wording of the handbook that it is aimed principally at those providing medical services (ie contractors). The Respondent, via the handbook, is highly prescriptive about the way in which contractors must carry out the medical services; the requirement to follow the Respondent's policies and procedures, the way in which they complete forms in respect of treated patients, what they wear, wearing ID badges, the content of their kit bags containing medical supplies, their personal conduct, appearance and hygiene as well as prescribing how they use social media.
54. The handbook includes a grievance procedure, which was exercised by the Claimant. There are repeated references to a disciplinary procedure (although the procedure itself is not contained within the document); as noted above the disciplinary procedure is referred to in contexts which must relate to contractors carrying out medical services.
55. The language of the handbook is descriptive of a closer relationship than that of Contractor and Customer; it refers to 'our team', 'our staff', 'your employment', 'managers'. It sets expectations as to what it requires from its medical services contractors and indicates a high level of subordination by the Claimant to the requirements set by the Respondent.
56. I conclude that the handbook is truly reflective of the relationship between the parties whereas the contract is not; the latter having presumably been drafted in an attempt to avoid the responsibilities owed by a company towards individuals with worker status. The terms of the contract simply do not reflect the reality of the situation and I am entitled to take into account the relative inequality of bargaining power (**Autoclenz**); it is not realistic to expect the Claimant to have real say in the terms of the contract presented to her for signature or the handbook which binds her conduct and how she performs medical services whilst working for the Respondent.
57. It is notable that the handbook was not included in the Respondent's bundle; a glaring omission in light of its relevance to the issues in the case. Instead it was the Claimant who brought the document to the hearing.

58. As well as the terms of the handbook, I take into account the Claimant's evidence with regard to the provision of a uniform and kit bag by the Respondent. The Respondent suggested that many contractors bought their own uniform and kit but this was not the case for the Claimant and the assertion is not supported by the wording of the handbook or contract.
59. The Claimant did not possess a company email, but the Claimant will have been viewed as integrated into the Respondent's business wearing her logo bearing uniform and ID badge from the perspective of event holders and the public.
60. I note that the Claimant worked for a period for Anglesey Airport; during the quiet season for the Respondent over Christmas. This factor does not affect whether the Claimant was a worker whilst working for the Respondent. The Respondent asserts that it cannot guarantee work to the contractors throughout the year. The lack of future promised work likely leads to increased subordination; with contractors being concerned not to refuse shifts or risk not being offered future work. This appears to have been the scenario described by the Claimant. I am satisfied that, whilst she was working, the Claimant was a worker; the fact that there was a lack of mutual obligations between assignments does not preclude that conclusion. Once event or other work was accepted she was expected to work the whole assignment, creating mutuality of obligation for the duration of that assignment.
61. The Claimant was trained by the Respondent for her initial first aid qualification. This minimum level of qualification was set by the Respondent and it took steps to ensure the Claimant met it, at no cost to her. It flies in the face of reality to consider her a self-employed person in business on her own account, when she did not possess the necessary skills to market, without training paid for and provided by the Respondent. There is no question of the Claimant in this case having marketed her services to world at large; she provided the medical services as part of the Medic 1 team for the Respondent business.
62. Finally, I must bear in mind the test in **Fenoll**; I conclude that during the period she worked, the Claimant provided medical services for and under the direction of the Respondent, for which she received remuneration. The Claimant was a worker and I uphold her claim for holiday pay.

## DIRECTIONS

1. By no later than 14 days from receipt of this Judgment, the Respondent must provide a calculation of the holiday pay due to the Claimant with an explanation of how the figures for a week's pay have been calculated;
  - a. In light of the recent CJEU judgment in **King v Sash Window Workshop C-214/16** the Respondent is invited to confirm its position with regard to the period over which the Claimant can claim holiday payments;

2. Within 14 days of receipt of the Respondent's calculation the Claimant is to comment on whether she agrees the calculation;
3. Both parties should indicate whether a remedy hearing is required or whether judgment on remedy can be issued by consent.

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Employment Judge S Davies

Date 2 March 2018

JUDGMENT SENT TO THE PARTIES ON

20 March 2018

FOR THE TRIBUNAL OFFICE