

JERSEY / JUDGMENT

Matthew Leech v The Car Clinic Limited

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IN THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

IN THE MATTER: BETWEEN
 MATTHEW LEECH
 CLAIMANT
 AND
 THE CAR
 CLINIC LIMITED
 RESPONDENT
 INTERIM AND STRIKE OUT JUDGMENT
 Reference: [2021]
 TRE 43
 Hearing Date: 2
 September 2021
 Before: Mrs
 H Westmacott, Deputy Chairman

Appearance: For the Claimant: In
 person
 For the Respondent: Mr
 M Buckland, Law at Work

JUDGMENT

The Claimant was an employee of the Respondent from November 2017 until 27 January 2021 and the claim for notice pay continues. The claims in respect of unfair dismissal and failure to provide a written statement of terms and pay statements were made out of time and accordingly are struck out. The Tribunal has no jurisdiction to hear the claim and counterclaim in respect of ownership of assets and accordingly this claim and the counterclaim are struck out.

REASONS

Introduction

1. By a Claim Form presented to the Tribunal on 12 April 2021 the Claimant brought the following complaints against the Respondent:
 - (a) unfair dismissal;
 - (b) failure to pay notice pay;
 - (c) failure to provide itemised pay statements; and
 - (d) failure to provide written statement of terms.
2. In its Response Form, the Respondent made an application for all of the claims to be struck out on the basis that the Claimant was not an employee as defined under the Employment (Jersey) Law 2003 (the “Law”), or, if the Tribunal finds that the Claimant was an employee, the claims for unfair dismissal and failure to provide a written statement of terms and pay statements (the “Out of Time Claims”) should be struck out on the basis that they were presented out of time.
3. The Respondent also made a counterclaim in respect of items belonging to the Respondent that it asserts the Claimant removed from the Respondent’s premises without consent and has failed to return upon request. In his response to the counterclaim the Claimant denies taking any items belonging to the Respondent and asserts that the Respondent has retained items belonging to him, which he now seeks to recover (together the “Asset Claim and Counterclaim”).
4. A Case Management Hearing was held on this matter on 24 June 2021 (the “CMH”) at which the Tribunal listed an Interim Hearing (the “Interim Hearing”) with the purpose of determining the following issues:
 - (a) What was the effective date of termination of employment (the “EDT”)?
 - (b) If the EDT was more than 8 weeks before the Claim Form was submitted on 12 April 2021:
 - (i) was it reasonably practicable for the Claimant to have presented his claim within the 8 weeks; and (ii) if not, did the Claimant present his Claim Form within such time as was reasonable thereafter?
 - (c) Was the Claimant an employee as defined in Article 1A of the Law?
5. One further issue was raised at the CMH, but as the Claimant has been found to be an employee, that issue (as posed) is no longer relevant. Instead, the relevant issue to consider is: does the Tribunal have jurisdiction under Article 86 of the Law to deal with the Asset Claim and Counterclaim?

6. This judgment sets out my findings in relation to the issues referred to above following the Interim Hearing, together with my reasons for making those findings.
7. For the sake of completeness, I note that the Claim Form and the Orders that were made following the CMH refer to a claim for “withheld salary for 1 week in Nov ‘20”. In the Claimant’s response to the counterclaim he noted that in November 2020 he received his wages a week after pay day and that this was a breach of contract. The Claimant has not referred to any loss suffered as a result of this alleged breach of contract nor has he further particularised this claim. At the outset of the Interim Hearing the Claimant confirmed that he did not wish to pursue this claim any further and this claim is dismissed upon withdrawal. Evidence
8. I received witness statements in advance and heard oral evidence at the Interim Hearing from the Claimant and Mrs Leech (the Claimant’s mother) on behalf of the Claimant and from Mr Whipp (director of the Respondent) and Mr Atkins (operations manager of the Respondent) on behalf of the Respondent.
9. The Respondent provided a file of documents, the content of which was agreed with the Claimant, in advance of the Interim Hearing (the “File”). References in square brackets below are, unless the context suggests otherwise, to the relevant page of the File.
10. When making my judgment I considered all of the evidence both oral and written provided by the parties and made the findings of fact set out below. Only the facts that are relevant to the issues to be determined have been summarised in this judgment. Where there have been factual disputes to resolve I have done so on the basis of my assessment of the credibility of the witnesses and the consistency of their accounts with the rest of the oral and written evidence The Facts
11. In 2012 the Claimant started a business called the Car Clinic (the “Business”) and registered as a sole trader. In 2016 Mr Atkins became involved in the Business and the Claimant and Mr Atkins ran the Business in partnership together. The Claimant focused on the mechanical side of the Business and Mr Atkins focused on the administration and accounting side.
12. In November 2017, Mr Whipp and Mr Boschat became involved in the Business; Mr Boschat also working on the mechanical side of the Business and Mr Whipp providing funds for the Business. The partnership between the Claimant and Mr Atkins was dissolved and the Business was then operated through a limited liability company (the “Company”) that had been set up by Mr Whipp in 2015. The name of the Company was changed to the Car Clinic Limited and the Company’s bank account was also put into the name of the Car Clinic Limited and used for the purposes of the Business. This Company is the Respondent in this claim.

13. Other than a few WhatsApp messages, neither party has provided any documentation in relation to the set up of the Business or the Company and both parties agree that there were no formal written agreements made between the Claimant, Mr Atkins, Mr Boschat, Mr Whipp (together the “Individuals”) and the Respondent.
14. With regard to assets, Mr Whipp asserts that the assets of the business were transferred to the Respondent, but the Claimant asserts that there was no discussion or agreement reached in relation to any of the tools or equipment that he had purchased when he set up the Business.
15. At the Interim Hearing the Respondent’s representative highlighted certain statements made in the Claimant’s pleadings and witness statement regarding his position within the Company, asserting that it is conflicting and this indicates a lack of credibility. However, following the Claimant’s oral evidence given at the Interim Hearing I found him to be a credible witness. Further, it is my view that the points highlighted by the Respondent’s representative did not indicate any form of deceit or dishonesty on the Claimant’s part. Instead, they illustrate that, over time, as the Claimant became aware of certain facts, his understanding of his position changed. They also demonstrate that there was misunderstanding and confusion regarding his position, which is not surprising given the lack of documentation between the Claimant and the Respondent.
16. Following the Interim Hearing it became evident that, when Mr Whipp and Mr Boschat became involved in the Business in November 2017, the Claimant understood that the Individuals were all to be directors and equal shareholders of the Respondent. This understanding is supported by various messages that were sent between the Individuals via a WhatsApp group. While Mr Whipp was not able to recall the exact messages being sent or received he did confirm that they reflected the nature of the discussions that were held at the time and, while he noted that there were also wider and alternative discussions, he accepted that the messages reflected at least part of those discussions. The relevant parts of those messages are as follows:
 - (a) From Mr Atkins “Gary did you want me to draft up some Directors service contracts” [233];
 - (b) From Mr Whipp in response “If you want mate. I’m happy to do a one pager to go with what you guys want.” [233]; and
 - (c) From Mr Whipp “We can have any agreement you want but reality is we will own 25% each so what do you want. Happy if you knock something up but not sure what you want.” [237].
17. Shortly after Mr Whipp and Mr Boschat became involved in the Business, the Claimant said that he understood from Mr Whipp that neither he, Mr Atkins nor Mr Boschat could be formally listed as directors and possibly also shareholders as they had not passed credit checks. It was not clear whether the listing referred to was on the Company’s bank account or with the Jersey Financial Services Commission (the “JFSC”). Nevertheless, the Claimant thought that the intention remained for the 4 Individuals to become directors and equal

shareholders of the Respondent and that the relevant paperwork for this was being taken care of.

18. Mr Whipp on the other hand said that he would not have been prepared to sit on a board of directors and share liabilities with the other 3 Individuals if they had not passed credit checks. When asked whether he communicated this to the other Individuals Mr Whipp said that he “would have had conversations ... on several occasions” about the Claimant not being a director or a shareholder.
19. When Mr Whipp was asked why he thought the other 3 Individuals were willing to hand over control and ownership of the Business only to become self-employed contractors going forward, Mr Whipp explained that he intended to give the other 3 Individuals a share of the profits once the Business became profitable. Mr Atkins said he knew that he was handing ownership and control over to Mr Whipp, but understood that he would share in any profits that were made and take ownership again in the future.
20. Mr Whipp also mentioned that the Business had liabilities when he took it on. The Claimant, however, said that the Business had a good customer base, lots of goodwill and sufficient cash flow and the liabilities of the Business were paid off from the money that the Business made. The Claimant asserted that funds provided by Mr Whipp were used to rent a larger premises and to purchase cars to sell on. Mr Atkins confirmed that the Business had both debt and cash flow, but indicated that he did not think the Business could have continued without Mr Whipp’s involvement.
21. The Claimant’s claim relies upon him being an employee of the Respondent and the Respondent asserts that he was not an employee, but a self-employed contractor. At the Interim Hearing the Claimant confirmed that at the time, as he thought that he was a director and shareholder of the Respondent, he understood that he was, and he was happy to be, a self-employed contractor working for the Respondent. However, the Claimant said that, when he became aware in January 2021 that he was neither a director nor a shareholder of the Respondent, he then believed that he had, in fact, been an employee of the Respondent rather than a self-employed contractor.
22. The Claimant gave evidence to say that he had put a lot of time and effort into the Business the entire time that he was involved with it. The Respondent’s case is that there were issues with the Claimant’s timekeeping, but it has not given any specific details of this assertion. It also asserts that the Claimant was selective in the work he chose to do. The Claimant responded indicating that he was commercial in his approach and only declined to do work that would not be profitable for the Business. Mr Whipp said that he did not seek to discipline the Claimant for any poor conduct as he was not an employee. However, even if the Claimant was self-employed, rather than an employee, Mr Whipp (as sole director and owner of the Company) would have been in a position to address any alleged poor conduct. For example, it would be unusual for a client of a self-employed contractor to continue to instruct and pay a contractor if they were performing poorly. The fact that the Respondent

did not address any alleged poor conduct at the time supports the position that there was no poor conduct. I found the Claimant to be an honest and credible witness and accept that his conduct was good and he worked hard for the Respondent.

23. The parties' positions in the documents provided regarding the Claimant's pay were confusing and conflicting. However, at the Interim Hearing the parties seemed to agree that Mr Atkins was the most knowledgeable in relation to how the amount of pay was determined and how payment was made. Mr Atkins explained that he would discuss pay with the Claimant and Mr Boschat and together they would determine what their "drawings" from the Company should be. Mr Atkins said he would have been most influential in determining pay as he was closer to the Company's finances: if funds were low they may take less pay, but if cash flow was good they may take a bonus. However, he also said the amount of pay was determined by their living expenses.
24. With regard to holiday, the parties agreed that the Claimant did not have to seek approval for his holiday. He did however notify Mr Atkins of any holiday he was taking and consideration was given to whether anyone else was absent at the same time. The Claimant was paid while he was on holiday.
25. The Respondent paid the Claimant's social security contributions and the Claimant thought that the Respondent had also been dealing with his tax. However, the Respondent did not pay any tax on behalf of the Claimant.
26. The parties agree that the Claimant never substituted anyone to work in his place for the Respondent. However, the Respondent argues that the Claimant could have done so had he wished to and Mr Whipp said that if he had objected to the Claimant appointing someone else to work in his place, he would have had no right to do anything about this. The Claimant said that if he had asked someone to help out while he was unavailable, that person would have been paid directly by the Respondent and not through him. The Respondent did not dispute this.
27. The parties further agreed that the Claimant's work was not supervised, nor was he subject to any policies or procedures of the Respondent.
28. The Claimant also noted that he was described on the Company's website as "the backbone of the company" [245].
29. It is not in dispute that the contract between the parties terminated on 27 January 2021 and the Claim Form was presented on 12 April 2021. In the cover letter under which the claim form was presented and the Claimant's witness statement he makes reference to the following, all of which relate to the period from 27 January to 12 April 2021:
 - (a) the Claimant was anxious and stressed as a result of the fact that he had been shut out of the Business he built and was not able to work for 5 weeks as a result. The Claimant provided a letter from his doctor following a consultation on 24 March 2021 to evidence this [201];

- (b) the Claimant had to seek other employment to ensure that he could cover his rent and other bills;
 - (c) the Claimant was trying to obtain documentation relevant to his directorship and shareholder status in the Company, as well as copies of the Company accounts;
 - (d) the Claimant was seeking advice from the police and the JFSC; and
 - (e) the Claimant was looking into purchasing the Business from Mr Whipp and this is evidenced by an email from the Claimant to Mr Whipp on 17 February 2021 [197]. The Law Definition of Employee
30. Article 1A of the Law defines 'employee' as follows: "(1) In this Law –
- (a) "employer" means a person who employs another person; and
 - (b) "employee" means a person who is employed by an employer.
- (2) For the purposes of paragraph (1), a person is employed by another person if the first person works for the second person under a contract of service or apprenticeship with the second person.
- (3) For the purposes of paragraph (1), a person is also employed by another person if the first person enters into any other contract with the second person under which –
- (a) the first person undertakes to do, or to perform personally, work or services for the second person; and
 - (b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person.
- (4) It is immaterial whether a contract to which paragraph (2) or paragraph (3) refers is express or implied.
- (5) If the contract is express, it is immaterial whether it is oral or in writing."
31. The law in relation to employee status, including the interpretation of Article 1A of the Law, has been set out in detail in the case of *Bisson v Dore & Red Appco Cabs Limited* D-34/2016, which has been cited and further analysed by the Tribunal in many cases since. In summary, in so far as it is relevant to the facts of this case, the relevant law on this matter is as set out below.
32. For someone to be considered to be an employee under Jersey law they must either be a '1A(2) Employee' or a '1A(3) Employee', or indeed they can be both.
33. To establish that someone is a 1A(2) or a 1A(3) Employee they must:
- (a) be employed subject to a contract, which can either be expressed orally or in writing, or it can be implied; and

- (b) provide services personally in accordance with the contract.
34. To establish that someone is a 1A(2) Employee they must also satisfy the following:
- (a) the contract must include a 'mutuality of obligation', meaning there must be an obligation on the employer to provide work and an obligation on the employee to accept an offer of work; and
 - (b) the employer must exercise a sufficient degree of control over the work carried out by the individual so as to make the employer the master.
35. Mutuality of obligation is not required in order to establish someone is a 1A(3) Employee. However, it is necessary to show that the person to whom the services are provided is not the individual's client or customer. Personal Performance
36. For both a 1A(2) and a 1A(3) Employee, it is necessary to establish that there is an obligation on the person claiming to be an employee to provide services personally. Whether or not there is such an obligation will depend on the particular facts of the matter.
37. The terms of the agreement between the parties (express and implied) must be carefully considered to determine whether or not the person performing the services is required to perform them personally or whether there is a genuine right of substitution, in accordance with which the person claiming to be an employee is entitled to engage someone else to provide the services on their behalf.
38. The Tribunal in *Bisson* considered various principles relating to personal performance, including the following: "(a) an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally; (b) a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance; and (c) 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." Nature of the Relationship
39. Even if personal service is required, the service provider may still not be an employee if they are providing their services to someone who is considered to be their client or customer. Someone who is providing services directly to their clients or customers would be considered to be self-employed, rather than an employee of that client or customer.
40. The Employment Appeals Tribunal in the case of *Cotswold Developments Construction Ltd v Williams* [2006] IRLR 181 provides some helpful comments in relation to the question of whether or not someone is an employee or self-employed as follows: "... A focus on 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."
- Time Limit for Presenting a Claim

41. Article 7(3) of the Employment (Jersey) Law 2003 (the “Law”) states as follows in relation to referring a claim for failure to provide a written statement of terms to the Tribunal: “The Tribunal shall not consider a reference under this Article in a case where the employment to which the reference relates has ceased unless the reference was made –
- (a) before the end of the period of 8 weeks beginning with the date on which the employment ceased; or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 8 weeks.”
42. Article 53(4) of the Law includes almost identical terms as Article 7(3), but in relation to referring a claim for failure to provide pay statements to the Tribunal.
43. Article 76(2) of the Law states as follows in relation to referring a claim for unfair dismissal to the Tribunal: “... the Tribunal shall not consider a complaint under this Article unless it is presented to the Tribunal –
- (a) before the end of the period of 8 weeks beginning with the effective date of termination; or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.”
44. Article 63(1)(b) defines the EDT in cases where no notice of termination is given as “the date on which the termination takes effect”. Extension of Time
45. The test for the tribunal to accept a late claim under Article 7(3), 53(4) or 76(2) of the Law was, most recently, set out in the case of *Fox v LNF Holdings Limited*
- [2020] TRE 104 as follows: “a Claimant must persuade the Tribunal of each component of the two-stage test as set out in those Articles (the test being identical in each case). The Claimant must demonstrate: (a) that it was not “reasonably practicable” for her to have submitted the Claims to the Tribunal in time (ie within eight weeks of the effective date of termination of employment). The burden is on the Claimant in this regard; and (b) having satisfied the first limb of the test, the Claimant must also satisfy the Tribunal that the time within which she presented the Claims was reasonable in the circumstances. The Tribunal noted the case of *Skrzat v Jersey Telecom Group Limited* (2001) JET 1005-66/11 in which the Tribunal was clear that it will only accept a submission that it was not “reasonably practicable” for a claimant to file a complaint within the relevant time limits in the “most exceptional circumstances for example where some highly unusual and unforeseen event intervenes in the time between the EDT and filing of the [Claim Form]...or where a [claimant] genuinely did not know of the time limit or his rights.” As to the lack of knowledge the Tribunal in *Skrzat* further observed that that “would be difficult to establish now that the Law is bedded down in Jersey life and free accessible advice is

available from JACS and CAB on employment law issues”. The Tribunal also kept in mind the English Court of Appeal case of Marks and Spencer plc v Williams-Ryan [2005] EWCA Civ 470 and the Jersey Employment Tribunal case of Jones v Royal Bank of Scotland International Limited JET 1408125/06, both of which state that the word “practicable” should be given a liberal interpretation in favour of the employee.” Employment Dispute

46. Article 86 of the law states as follows: “(1) Proceedings may be brought before the Tribunal in respect of an employment dispute to which this Article applies by any party to the dispute ...
- (3) This Article shall apply to an individual employment dispute which involves a claim in respect of which a court in Jersey would under the law for the time being in force have jurisdiction...”
47. Article 1 of the Law states: ““employment dispute” means a dispute between an employer or employers and an employee or employees in the employment of that employer or employers which is connected with the terms of employment or with the conditions of labour of any of those employees or with the rights or duties of an employer or an employee;”.

Conclusion

Employee Status

48. The Claimant’s status is not determined by how the parties label or view the Claimant, either internally or externally (for example with the relevant authorities). The labels given to the Claimant and the way in which the parties view his status may be indicative of the Claimant’s role, but they can also be incorrect and so will not be conclusive. The Claimant’s status is determined by whether he falls within the definition of ‘employee’ under the Law.
49. In order to be an ‘employee’ as defined in the Law there must be a contract between the alleged employer and employee. Accordingly, the first question I asked myself when determining whether or not the Claimant was an employee was whether there was a contract between the parties. There does not appear to be any dispute in relation to this question and it is clear from the evidence before me that, while there was no written contract, there was an implied contract between the parties, at least in so far as the Claimant provided services to the Respondent and the Respondent paid the Claimant for those services.
50. However, the Respondent asserts that there was no obligation on the Claimant to provide those services and that he was completely free to choose whether or not he did so once the Respondent had offered him the opportunity to do so. If this is correct, there would be no ‘mutuality of obligation’ between the parties and the Claimant could not be an employee under Article 1A(2) of the Law. However, even without mutuality of obligation, the Claimant could still be an employee if the test under Article 1A(3) of the Law is satisfied.

51. Accordingly, I have considered whether the remainder of the requirements under Article 1A(3) formed part of the relationship between the parties. The next question I asked myself was, therefore, whether or not there was a requirement for the Claimant to provide services personally.
52. Both parties agreed that the Claimant always performed his work personally, no one else was substituted in his place. However, the Respondent argued that the Claimant could have asked someone else to work for the Respondent on his behalf and the Respondent would not have been in a position to object to any substitute.
53. While it does not appear to be in dispute that the Claimant could have asked someone else to work for the Respondent if he were unable to work, for example, if he were ill, in accordance with one of the principles referred to in Bisson, this is consistent with personal performance.
54. In addition, I am of the view that the Claimant would not have had an unfettered right to substitute someone else in his place. The parties have made it clear that the 4 Individuals were not on an equal footing; Mr Whipp was the sole director and shareholder of the Respondent, the remaining individuals merely worked for the Respondent. It is disingenuous to suggest that had the Claimant sent someone else to work in his place Mr Whipp could and would not have prevented this had he wished to.
55. I also note that, had the Claimant asked someone else to work for the Respondent, it is most likely that that person would have been paid directly by the Respondent for the hours they worked: they would not have been paid by the Claimant.
56. Accordingly, I conclude that there was a requirement for personal performance by the Claimant and this element of the employee and employer relationship is present.
57. I must now consider whether the final element of the test set out under Article 1A(3) is satisfied and ask myself: was the Respondent a customer or client of the Claimant?
58. In order to answer this question the nature of the relationship between the parties must be looked at more closely to determine whether the relationship more closely resembled that of an employee and employer relationship or whether it was more akin to that of a self-employed service provider and customer.
59. There are a number of facts that assist in illustrating the nature of the relationship between the parties. The facts which support the argument that the Respondent was a client or customer of the Claimant are as follows:
 - (a) during the Claimant's employment both parties considered him to be a self-employed contractor;
 - (b) the Claimant did not have to ask for approval to take his holiday; and
 - (c) the Respondent did not pay the Claimant's tax.

60. The Respondent has argued that the fact that the Claimant was not supervised nor was he subject to any policies or procedures indicates that he was a self-employed contractor. However, this is more likely to be as a result of the Respondent not having anyone to supervise the Claimant, nor having any policies or procedures in place, rather than because he was a self employed contractor.
61. While there are facts which indicate that the nature of the relationship between the parties may be one of a independent contractor and client, they are not conclusive of this and they must be weighed against any indicators that the relationship was more akin to that of an employer and employee.
62. The facts which support the argument that the Respondent was not a client or customer of the Claimant are as follows:
- (a) the Claimant worked full time for the Respondent;
 - (b) the Claimant discussed his holiday dates with the other Individuals who worked for the Respondent;
 - (c) the Claimant was paid whilst on holiday;
 - (d) the Respondent paid the Claimant's social security contributions;
 - (e) there is no evidence to show that the Claimant marketed his services "as an independent service provider to the world in general"; and
 - (f) the Claimant appeared to work for the Respondent as an integral part of the Respondent's business operations.
63. Again, each of these facts alone are not conclusive in proving that the Claimant was an employee of the Respondent, but when looked at together and balanced against the facts in support of the Respondent being a client of the Claimant, the facts supporting the argument that the relationship between the parties was one of employee and employer rather than independent contractor and client are more persuasive.
64. In addition, it is noted that the Claimant declined to do work which was not profitable for the Business and he was also involved in determining how much he would be paid. While it might be unusual for an employee to do both of these things, it would be even more unusual for an independent contractor to do them, unless he was also a director or a shareholder of the Company.
65. While the Claimant argues that he should have been a director and shareholder of the Company, he appears to accept that he was not listed as one. I have not been asked to determine whether or not the Claimant should have been a director or shareholder of the Company and I must make the determination of the issues at hand on the basis of the evidence before me, which indicates that the Claimant was neither a director nor a shareholder of the Company.

66. Considering all of the above, I conclude that the nature of the relationship between the parties was closer to that of employee and employer, rather than independent contractor and client. The test under Article 1(A)(3) of the Law is therefore satisfied and I conclude that the Claimant was an employee of the Respondent. Out of Time Claims
67. The contract between the parties terminated immediately, without notice, on 27 January 2021. In accordance with Article 63(1)(b) of the Law, the EDT is, therefore, 27 January 2021. The period of 8 weeks after both the EDT and the date on which the employment ceased ends on 23 March
2021. Following Articles 7(3), 53(4) and 76(2) of the Law respectively, any claims for failure to provide a written statement of terms, failure to provide itemised pay statement or for unfair dismissal will be out of time if filed after this date. As the claim form was filed on 12 April 2021, the Out of Time Claims were filed 20 days late.
68. Accordingly, the Out of Time Claims should be struck out unless I am satisfied that it was not 'reasonably practicable' to bring the claims within the 8 week period and, if so, that they were then brought within a reasonable time after that deadline.
69. In accordance with the case of *Skrzat*, it would only be found not to be reasonably practicable to bring a claim in exceptional circumstances (for example, if some unusual, unforeseen event occurred to prevent the claim from being brought in time) or if the Claimant genuinely did not know of his rights or the time limits. I have also considered that 'practicable' should be given a liberal interpretation in favor of the Claimant, as was determined in the cases of *Marks and Spencers Plc* and *Jones*.
70. The Claimant has referred to the following factors as impacting upon his ability to bring the claim on time:
- (a) he was seeking other employment;
 - (b) he was seeking advice from the police and the JFSC;
 - (c) he was trying to obtain documentation regarding his status with the Company as well as copies of the Company accounts;
 - (d) he was looking into purchasing the Business from Mr Whipp; and
 - (e) he was anxious and stressed.
71. While consideration is required prior to bringing a claim, filing the claim form is not an onerous burden and the fact that someone is seeking advice or looking for employment would not be considered sufficient justification for missing the deadline to file a claim.

72. The Claimant has also made reference to awaiting documentation as a reason for the late filing. However, it is not accepted that the claim could not have been brought prior to the documentation being provided. Indeed, it is understood that the claim was ultimately filed without the documentation having been provided.
73. It is understood that the purpose of the Claimant looking into purchasing the Business from Mr Whipp was in order to settle matters between the parties. However, seeking to settle matters is also insufficient justification for missing the deadline to file a claim. Settlement discussions can, and indeed may be encouraged to, continue even after a claim has been filed.
74. The Claimant has also made reference to suffering from anxiety and stress. In some cases it may be held that it is not reasonably practicable to bring a claim in time on the basis that the Claimant is incapacitated due to medical reasons. While it is not disputed that the Claimant was suffering from anxiety and stress at the relevant time, he has not satisfied the burden of proof to show that he was incapacitated to such an extent that it was not reasonably practicable for him to bring his claim in time.
75. Accordingly, the Claimant has not satisfied the burden of proof that any of the factors referred to above would constitute such exceptional circumstances that prevented the claim being brought in time.
76. However, I have also considered whether the claim could not be brought in time because the Claimant was genuinely not aware of his rights.
77. The Claimant has indicated that, until he became aware he was neither a director nor a shareholder, he considered himself to be a self employed contractor rather than an employee. Accordingly he may not have been aware of his rights as an employee until then. However, the Claimant said he was made aware that he was not a director or a shareholder in January 2021. Accordingly, the Claimant had the full 8 weeks (until 23 March 2021) to make himself aware of his employment rights.
78. As was noted in Skrzat, a lack of knowledge in relation to the law is difficult to establish “now that the Law is bedded down in Jersey life and free accessible advice is available from JACS and CAB on employment law issues”. Accordingly, ignorance of the law in relation to employee rights is an insufficient argument to satisfy the burden of proof required to permit an extension of the 8 week time period.
79. In conclusion, any argument that it was not reasonably practicable to bring the claim in time fails and the Out of Time Claims are struck out. Asset Claim and Counterclaim
80. The Asset Claim and Counterclaim relate to tools and equipment which the parties have possession of but which the other party asserts they own. Both parties response to the Asset Claim and Counterclaim being that they only hold tools and equipment that they themselves own.

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81. The dispute in relation to the ownership of the tools and equipment stems from the agreement that was made when the Business was transferred to the Respondent. With the Claimant asserting that there was no agreement that the tools and equipment that he had brought would transfer to the Respondent, while the Respondent asserts that the tools and equipment were owned by the Business and transferred to the Respondent as part of the Business.
82. In accordance with Articles 1 and 86 of the Law, proceedings may be brought before the Tribunal in respect of 'employment disputes', which are defined as a dispute between an employee and employer "which is connected with the terms of employment or with the conditions of labour of any of those employees or with the rights or duties of an employer or an employee".
83. There is no assertion that the Asset Claim and Counterclaim are connected to the terms of employment or rights or duties of the parties. They appear to relate to the ownership of assets following the transfer of the Business. Accordingly, there is no jurisdiction for the Tribunal to hear the Asset Claim and Counterclaim and they are struck out. Notice Pay Claim
84. The only remaining claim before the Tribunal is, therefore, the claim for failure to pay notice pay. This claim proceeds and orders are to be made accordingly. Mrs H Westmacott, Deputy Chairman Sent to the parties on: 7 October 2021
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