



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr Adnan Choudry

**Respondent:** Brighter Graphics Limited

**Heard at:** Cardiff by video

**On:** 18 & 19 April 2023

**Before:** Employment Judge K Hunt

### Representation

**Claimant:** In person

**Respondent:** Ms Akers (Counsel)

## RESERVED JUDGMENT

1. The claims do not fall within the scope and territorial jurisdiction of the Employment Rights Act 1996 and the Tribunal does not have jurisdiction to hear the claims in accordance with Rule 8(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and the claims are dismissed.

## REASONS

### Introduction

1. The claimant brings claims of unfair dismissal, unlawful deductions from wages and for a redundancy payment.
2. There is a dispute between the parties about a number of preliminary matters that require determination before the substantive claims can proceed. This is because the respondent says there is no jurisdiction to hear the complaints on a number of bases namely territorial, and/or that the claimant was a self employed contractor and that he does not have two year's qualifying service for the unfair dismissal claim.
3. At a case management hearing on 24 November 2023, the case was listed for a two day preliminary hearing to determine the preliminary issues identified and to hear the Respondent's application to strike out the claim and/or for a deposit order on the basis that the claims have no or little reasonable prospects of success.

### Claims and Issues

4. The Claimant is making the following complaints:
  - i) Unfair dismissal;
  - ii) Redundancy pay
  - iii) Unauthorised deductions from wages.
5. A disability discrimination claim was dismissed on withdrawal.

### ISSUES

6. The preliminary issues were set out in the CMO dated 24/11/2023 and agreed at the outset of the hearing as set out below.
7. Does the Tribunal have jurisdiction to hear the claimant's complaint under Rule 8(2) of the Employment Tribunal Rules of Procedure? The following questions are relevant:
  - 7.1.1 Did the Respondent reside or carry on business in England and Wales?
  - 7.1.2 Did one or more of the acts or omissions complained of take place in England and Wales?
  - 7.1.3 Does the claim relate to a contract under which the work is or has been performed partly in England and Wales?
  - 7.1.4 Is there a connection with Great Britain, which is at least partly a connection with England and Wales, which gives the Tribunal jurisdiction? [**See *Lawson v Serco Ltd [2006] UKHL 3***]
  - 7.2 It may be appropriate for the Tribunal to ask whether the employment relationship has much stronger connections both with Great Britain and with British employment law than with any other system of law [**See *Duncombe v Secretary of State for Children, Schools and Families (No.2) 2011 ICR 1312, SC and Ravat v Halliburton Manufacturing and Services Ltd [2012] UKSC 1***] for claims under the Employment Rights Act 1996.
  - 7.3 Does the employment contract confer jurisdiction on another country?
8. Whether the claim of unfair dismissal should be dismissed because the claimant is not entitled to bring it if they were not an employee of the respondent as defined in section 230(1) and (2) of the Employment Rights Act 1996 and;
9. Had the claimant been employed by the respondent for at least two years when their employment ended?
10. Whether the claim of unauthorised deduction from wages should be dismissed because the claimant is not entitled to bring it if they were not a

worker of the respondent as defined in section 230(3) of the Employment Rights Act 1996.

11. Should the claim or any part of it be struck out because it has no reasonable prospect of success?
12. Does the claim or any part of it have little reasonable prospect of success? If so, should the claimant be ordered to pay a deposit of between £1 and £1000 as a condition of continuing with it?

**Procedure – documents and evidence heard**

13. I had a bundle of documents of 371 pages and during the hearing two additional documents were referred to by the claimant and having asked for copies to be provided to the Tribunal and the Respondent (whose documents they were though not included in the Bundle) and having adjourned to allow Ms Akers to take instructions on these, they were added to the end of the Bundle, as relevant to the issues.
14. I had a written witness statement from the claimant and for the respondent from Mr Zishan Chaudri, Mrs Elizabeth Lewis (Nee Griffiths) and Dr Imran Chaudry. I heard oral evidence from the claimant and the three witnesses for the Respondent.

**Fact-Findings**

15. I set out the following findings of fact which I determined as relevant to the issues. I am not making findings of fact on all points in dispute between the parties, only those that are relevant to the issues in the case as now identified.

**Residence**

16. The claimant was born in Pakistan and moved to the UK at age 11 and has a British passport. He was educated, went to university in the UK, got married, and has a daughter who was born and still lives in the UK. After divorcing his wife, he remarried in 2005. He owned a property in Cheltenham and that was his family home in the UK after his divorce and where his daughter stayed with him part of the time.
17. He was employed and had business interests in the UK from late 1980s through to 2007, after which he worked as a Consultant. During his life and working career he travelled widely and often between the UK and Pakistan, where he also had business interests. In 2005, he met his wife, who is South African, in Pakistan when she was working for the British Council there. In 2007 she became Head of Rhodene School in Karachi in Pakistan. The claimant also worked at Rhodene from 2007 and became owner of the School in 2013. He filed income tax returns in Pakistan.
18. Between 2005 and 2015, as evidenced in his passport, he frequently travelled between his home in the UK and Pakistan and also travelled frequently to South Africa with his wife.

19. There is a dispute as to whether or when the claimant moved from the UK to Pakistan on a permanent basis. As outlined in brief in my findings below, I find that based on the evidence seen and heard, by 2017 at the latest the claimant was based and resident in Pakistan.
20. Between 2017 and May 2023, as evidenced by his passport, the claimant has travelled to the UK on just 4 occasions for a total of approximately 37 days, including trips during which he also visited Paris on a family trip and the Netherlands on a business trip. Notwithstanding that this includes the period of the pandemic and a period in 2021 when the claimant suffered a period of ill health, I find also that the claimant's home in Cheltenham was put on the market in or around October 2020 and was sold in 2022. He no longer has a permanent base in the UK and in October 2020, he registered for a postal vote from his brother Dr Imran Chaudri's address in Slough. He uses this address for mailing purposes in the UK. The claimant has a permanent residence in Pakistan, a rented house in an affluent area of Islamabad, in which he lives with his wife.
21. On social or business visits to the UK since 2021 he has stayed with family, his brother Dr Imran Chaudri for short stays of 2-4 days and his brother Zishan Chaudri (Managing Director of the Respondent), when on business visits relating to the Respondent. He arranges his affairs to pay tax on income in Pakistan and there was no evidence before me that he pays or has paid income tax in the UK with respect to any work carried out since 2021 for Brixtech or the Respondent and in December 2022 he was unable to participate in health cover insurance, partly on account of not being in the UK for a minimum of 180 days.

#### **Incorporation of Brixtech Ltd – September 2020**

22. In 2020, the claimant's younger brother, Zishan Chaudri (Mr Chaudri), was looking to set up a new business to licence software to the construction industry. At the time Mr Chaudri worked for a company, Cadline, who were in the same industry and for whom he had worked for 18 years. As family, Mr Chaudri discussed his plans for the new business with the claimant, who willingly supported him as his elder brother, offering advice from his own experience as a businessman and former business owner in the UK.
23. In July 2020, Mr Chaudri wrote a draft business proposal and financial forecast for FY21 for his new business. Under the heading for 'Costs' Mr Chaudri named himself and two colleagues (Darren Rattlidge and Barry Lewis) from Cadline, he listed two technical/sales roles, then 'third party outsourcing' and 'third party commission', with associated salary or costs. The claimant's name was not included in the draft proposal. I find that at the time, the claimant's support for his brother (in his own words in a subsequent email dated 20 January 2022) took the form of acting as 'advisor' and a 'sounding board to bounce ideas off', principally because Mr Chaudri was his younger brother and as such he would 'of course, have helped out' (page 152 of Bundle).

24. The company Brixtech Ltd was incorporated on 28 September 2020. Mr Chaudri was the sole shareholder and director. Mr Rattlidge subsequently joined the company as a director and minority shareholder in July 2021.
25. There was disagreement over the extent of the support or work carried out by the claimant for Brixtech Ltd at this stage. I find that Mr Chaudri downplayed the claimant's involvement and the work he carried out for Brixtech Ltd in this initial period and find that the claimant supported his brother with some of the practicalities of setting up the new company, as briefly set out below.
26. In the period September 2020 to March 2021, the claimant and Mr Chaudri were in regular contact and at times had daily calls when Mr Chaudri was getting the business set up and ready to trade and when it was first trading. The claimant helped with various tasks relating to marketing and branding including the logo, the website's site map, checking and branding of website content e.g. policies, setting up business email accounts, and sourcing and/or liaising with suppliers (pages 82 –93 and 111-120). The business's first order was made in December 2020 and Mr Chaudri left his previous full-time employment to work in Brixtech Limited full time in February 2021.
27. On 4 February 2021 the claimant was hospitalised and underwent surgery due to a brain haemorrhage. He discharged himself from hospital on 10 February 2021 and spent some months recuperating.
28. In relation to this period, the claimant contends that he was an employee and described himself in the email dated 20 January 2022 as 'always part of the plan' and likely to go down in history as 'the group's "first" employee'.
29. Mr Chaudri insists that at the time the claimant was offering his support as a brother, as a gesture of goodwill and due to their personal relationship and was never paid nor intended to be paid for his support as an employee or worker.
30. The claimant also expressed offering his support as a brother in the email dated 20/01/2022 (referenced above) and further accepted this in his oral evidence at the hearing. Notwithstanding this, the claimant alternatively likened himself to Mr Chaudri and Mr Rattlidge and contended that none of them received any remuneration from Brixtech Ltd at the outset until January 2022, and that all three were working without employment contracts and based on trust.
31. On this point, I find that there was a distinction between Mr Chaudri and Mr Rattlidge's position compared to the claimant. I take note of my findings above that Mr Rattlidge was named with Mr Chaudri in the original proposal and financial forecast for the business prior to incorporation and joined the business as a Director and shareholder alongside Mr Chaudri in July 2021. The claimant was neither and I do not find that they were all

three in the same position in this period, with respect to their roles or involvement in Brixtech Ltd.

32. The claimant also suggested that for his role in both Brixtech and later the Respondent, he had been promised 10% equity by Mr Chaudri. Mr Chaudri acknowledged that he had said to the claimant that if and when he sold the business, he would gift to the claimant, as his brother, 10% of the sale proceeds and denied offering him 10% equity in the business, which evidence I accept. I note that subsequently, a 5% shareholding in a new holding company incorporated in Ireland was offered to the claimant. This holding company was incorporated as a vehicle to acquire a company or companies in the Netherlands in 2023. I make no further findings in this respect as this has no bearing on the issues before me.
33. In the period between March and October 2021, a former colleague of Mr Chaudri (Ms Sanga) provided some marketing services on a self-employed basis for a few hours per month for Brixtech Ltd. Between March and October 2021, I find that there was little, if any, evidence before me of work carried out by the claimant for Brixtech Ltd, other than assisting in relation to a legal dispute, for which he later raised an invoice in November 2021.
34. On balance based on all of the evidence seen and heard, I find that in the period prior to and following incorporation of Brixtech Limited in September 2020 up to and including October 2021, the claimant carried out various tasks for the business, willingly supporting his brother as family and not as an employee or worker of Brixtech Ltd. There was no evidence before me of an agreement that he was nor was intended to be an employee of Brixtech Limited, during that period.
35. In or around October/November 2021, Ms Sanga stopped providing marketing services and Mr Chaudri asked the claimant to take on the marketing moving forward. Ms Sanga handed over work to the claimant who was introduced to customers as Ms Sanga's replacement and by Mr Chaudri on 9 November 2021 (page 136) as the 'full time point of contact for all marketing needs from now on' and later as 'marketing manager'.
36. On 30 November 2021 the claimant submitted two invoices to Brixtech Ltd for his services, one relating to 'consultancy services regarding a legal case' (as mentioned above) and the second relating to 'clean up Brixtech Contact Database'. Both invoices were addressed by the claimant from Islamabad, Pakistan and referenced as BxT invoice no. 001 and 002 and named the claimant as 'Freelancer'. The claimant also did some work in December 2021 relating to the acquisition of the Respondent and taking over the new systems, and I find that a working relationship as a self employed freelancer or contractor began in October/November 2021.

#### **Acquisition of the Respondent December 2021**

37. In June 2021, Mr Chaudri had entered into discussions to acquire the Respondent, a company that had been trading since 2001 and largely sold the product 'Bluebeam' that was a product also sold by Brixtech Ltd. On 9

November 2021 Mr Chaudri and Mr Rattlidge incorporated a new company, Brixtech Group Ltd (BTG), to act as a parent company through which they would acquire the 100% shareholding in the Respondent. Mr Chaudri approached his former colleague, Mr Barry Lewis, about being a business partner in this venture. In the event, it was Mr Lewis's wife, Mrs Elizabeth Lewis (nee Griffiths), who was appointed a Director of BTG alongside Mr Chaudri and Mr Rattlidge, later acting as Finance Director and doing book-keeping for Brixtech and the Respondent. Mr Chaudri and Mrs Lewis each hold 36.5% of the shares and Mr Rattlidge 25% of the shares in BTG.

38. The purchase of the Respondent by BTG was completed on 6 December 2021 and Mr Chaudri, Mrs Lewis and Mr Rattlidge were all appointed directors of the Respondent. The purchase was funded by a loan made by Mrs Lewis that she saw as her investment in the business, the loan was later repaid in full with interest.
39. On 12 December 2021 Mr Chaudri prepared a schedule of 'Projected Operating Costs – FY22' for both Brixtech Ltd and the Respondent, listing the costs for each separately. Under the heading 'Staffing Costs' this included the names of Mrs Lewis, Mr Chaudri, Mr Rattlidge and the claimant. The schedule showed projected costs for each, including for the claimant costs of £750 per month (£11,250 annual cost) against each company, being an overall total of £1,500 per month or £22,500 annual cost across both companies. Below 'Staffing Costs' the schedule included 'PAYE' with a calculation of national insurance costs and pension costs based on the 'staffing cost' figures above.
40. The projected operating costs also included for each company under the heading 'Pakistan', a number of roles denoted as 'Marketing/Telesales/Copywriter/Graphic Designer' and also under the heading 'Contractors' two named contractors 'Automate Now (Bart)' and 'In the Morrow (Jess)'. There was a separate heading for 'Marketing' costs listing 'Google Ads, LinkedIn, PCC, Facebook (AFFNAN)'.
41. Although Mr Chaudri stated in evidence that this did not show an intention that the claimant would be employed, there being lots of projections of things that did not materialise, he acknowledged that there had been lots of conversations with the claimant as to whether the claimant would be employed or self-employed as a contractor and multiple options were put forward. Mr Chaudri also accepted that in November 2021 and after the acquisition of the Respondent in December 2021, he and the claimant were in discussions for the claimant to move into a more formal role and that they started talking about formalising the marketing role, which they did in January 2022.
42. I find that at the time, the proposal and intent to formalise a role for the claimant included as one possibility employment of the claimant and that as managing director of the Respondent, Mr Chaudri was open to this.

### **Formalising claimant's working arrangements and status January 2022**

43. On 17 January 2022 the claimant attended a virtual meeting with Mrs Lewis and Mr Rattlidge to discuss his remuneration and formalising the marketing role. It was agreed that Mr Chaudri would not attend due to the close family relationship. There are no notes of the meeting taken at the time. The claimant sent an email to Mr Rattlidge and Mrs Lewis on 20 January 2022, as a follow up to the meeting and setting out his response to their discussions and thanking them for offering him the title of Marketing Director for both companies.
44. He went on to note that it was early days for the companies and important to ensure finances were properly managed. He noted that although not a shareholder in the '*current set up*', he was confident that as the companies grew he would be fairly rewarded '*whatever my role in the companies*', in the future. He stated that: "*As for the here and now I had mentioned to Shan [Mr Chaudri], myself, that it may be prudent for me to act as a contractor, at least in the short term, so that the companies can make a saving with regards to the PAYE, employer's liabilities. Then I could invoice whatever figure we would have agreed upon on a monthly basis. A small saving, nevertheless, a saving.*"
45. In relation to a figure, he mentioned as a benchmark the cost of employing a marketing assistant in the UK, stating that his role was much more encompassing than but that he would be happy to start at that level. He referred to 'the offer' of £1500 per month, and suggested a compromise figure of £2,000 to start and to be reviewed as the businesses develop and grow.
46. In her evidence Mrs Lewis states that the email is factually incorrect (not expressing how) and that neither she nor Mr Rattlidge responded to it at the time. The figure of £1,500 is supported by her witness statement which refers to '*an offer of a fixed fee of £750 per month for services to the Respondent*' and £750 for services to Brixtech Ltd. She suggested that the question of the claimant being an employee was never a topic for discussion as in her view he was a contractor, that they never '*offered PAYE*' that it would not be offered as he was based in Pakistan, and that the claimant '*wanted to remain as a contractor that was how we were working*' and that '*[they] didn't put [him] on PAYE, [he was] working in Pakistan*'.
47. Mrs Lewis also denied that they had offered the role of 'Director of Marketing' saying that he was not a director of the company and that this was a title the claimant came up with or gave himself.
48. On balance, I find that the claimant's email of 20 January 2022 is more likely than not a fair reflection of some aspects of the discussion held at the time and the understanding reached between the parties. The email reflects and I find that the claimant was agreeing to carry out work for both companies under the title of Marketing Director. I find it likely that a title of some form was discussed, taking into account that he had previously been introduced to customers as being responsible for marketing and as 'marketing manager', even before formalising the role.



49. The figure of £1500 per month is not disputed and aligns with the figures in the 'Projected Costs FY2022' drawn up by Mr Chaudri in December 2022. I find that the claimant was able to and did negotiate on his remuneration or fees and his counter proposal of a figure of £2000 was accepted by the Respondent, with the claimant subsequently invoicing the sum of £1000 per month in arrears to each of the Respondent and Brixtech Ltd.
50. It was accepted by Mr Chaudri that he had had many conversations with the claimant about employment, self-employment or working as a contractor and I find that prior to the meeting this remained a possible option for 'formalising' the claimant's role in January 2022. I also find it more probable than not that self-employment as a contractor remained an option and was discussed or assumed by Mrs Lewis at the meeting, I accept her evidence that she would not have 'offered PAYE' as an employee due to his being based in Pakistan and understanding of being unable to pay him 'on PAYE'.
51. Whilst I find that employment remained an option, in the event, I find that in formalising the arrangements first under discussion between the claimant and Mr Chaudri in November/December 2021, following the meeting with Mrs Lewis and Mr Rattlidge, the claimant himself agreed and proposed 'at least in the short term', that he provide his services as a self-employed contractor and that this was agreed by the Respondent and the basis on which both parties formalised the claimant's working arrangements.
52. On 31 January 2022, the claimant submitted an invoice to Brixtech Ltd (BxT 003) for £2000 for 'monthly fee for marketing and general business services in January 2022'. After which, two invoices were raised on 1<sup>st</sup> of each month for the previous month's fee of £1000 to Brixtech Ltd and £1000 to the Respondent between 1 March 2022 (for February's fees) to 31 December 2022 for December's fees.
53. On 31 December 2022, Brixtech ceased trading. There was a dispute between the parties as to whether any work transferred from Brixtech to the Respondent, with the Respondent strongly denying that there was a merger of the two businesses. Based on the evidence including from Mr Chaudri that he had asked their accountants to prepare a set of consolidated accounts in order to review and compare the overall position of the two businesses including looking for efficiencies; and that some customers were taken over by the Respondent as they still had active licences and renewed their contracts with the Respondent; I find that some customers and work did transfer to the Respondent but make no further findings on the extent or degree of any transfer, as not being of further relevance to the issues before me.
54. From January 2023 to May 2023, the claimant issued a single invoice monthly to the Respondent, increasing from the previous fees totaling £2,000 to £2,500 (in arrears for each month). The invoices in 2023 also included on occasion expenses for travelling. The invoices continued to

be issued by the claimant from his address in Islamabad, Pakistan and fees and fees were paid gross in pounds sterling by transfer to the claimant's UK bank account, together with any expenses due.

**Pakistan Office**

55. Mrs Lewis suggested that in March 2022 the claimant decided to open an office and recruit staff in Pakistan of his own accord and that the claimant was not in a financial position to pay the upfront costs and expenses in relation to setting up 'his' office at the time. She suggested that the claimant shared projected office costs with the Respondent and that as part of the costs of outsourcing, the Respondent agreed to pay these expenses as a 'gesture of goodwill' due to his relationship with Mr Chaudri, and as a 'fair and kind gesture' to support Mr Chaudri's brother in his financial difficulties. The claimant denied that he was in financial difficulties and his brother, Dr Imran Chaudry, agreed with this, whose evidence I accept. I do not find it a credible explanation or contention that the claimant decided to open an office and recruit staff 'off his own back' and that the costs and expenses of this were paid by the Respondent as a 'gesture of goodwill'.
56. The schedule of 'Projected Costs FY2022' prepared by Mr Chaudri in December 2021 included projected costs for a number of roles based in Pakistan. Mr Chaudri also accepted that he had discussed outsourcing or off-shoring work to Pakistan with the claimant, who promoted this and Mr Chaudri believed it was a good idea.
57. The claimant detailed the costs of the Pakistan office in itemised statements for 'Expenses - Islamabad Office'. These expenses were paid by bank transfer in sterling to the claimant's UK bank account. The claimant exchanged currency locally and paid the wages of staff in Pakistan in Pakistan Rupees (PKR) as an administrative convenience for the Respondent, who was unable to transfer wages or pay staff directly from the UK. Similarly, the claimant rented an apartment as office premises in his own name, as the Respondent did not have the standing to do so in Pakistan. In relation to a proposed acquisition of another company in the Netherlands (referred to above) in April 2023, the claimant also provided a forecast of costs for expansion of the Pakistan office to meet this potential growth and set out two options for the Respondent in respect of the costs for serviced offices or retaining 'residential' office space.
58. Taking account of the evidence seen and heard, I find that in November/December 2021 Mr Chaudri had discussed and considered outsourcing or off-shoring roles to Pakistan. Such costs were included in the schedule of 'Projected Costs FY 2022' prepared by Mr Chaudri. I find that this was a business decision that made economic sense and was not a 'gesture of goodwill' towards his brother but a business decision made by the Respondent and put into effect in March 2022. I further find that the actual costs incurred for the Pakistan office including wages and overheads were itemised by the Respondent and included in the accounts set out in 'Brixtech and Brighter Graphics Full Year 2022', which document

was based on and summarised the annual profit and loss accounts of both companies and was prepared by the Respondent's accountants (Cadre) at the request of Mr Chaudri.

59. It was alternatively submitted by the Respondent that the staff in Pakistan were employed by the claimant in his personal capacity as 'substitutes' in relation to his marketing role. I find that given the range of staff projected (on the forecasts) and subsequently working in the Pakistan office, this is not credible. The skills required included varying roles from telesales to Graphic Designer and later included a finance controller to work with Mrs Lewis in finance. I find that the staff recruited were not acting as 'substitutes' for the claimant but were recruited to meet the specific needs of Brixtech Ltd and the Respondent and operating as an outsourced or off-shore back office for the Respondent, which was managed by the claimant on its behalf. This is also reflected in actions taken by the Respondent in seeking to assume control over the Pakistan office in April 2023, which I refer to below.
60. Prior to the dispute arising and termination of his engagement in May 2023 (which I will address below), I find that as a contractor the claimant worked with relative autonomy in how and when he provided services in marketing and managing the staff and back office as 'representative' for the Respondent (as noted in staff contracts), subject to necessarily aligning as and when needed with business hours in the UK.

### **Termination**

61. In or around April 2023, Mr Rattlidge and Mrs Lewis raised concerns over the exchange rates used by the claimant in respect of the Pakistan wages and office costs, alleging that the costs were being overcharged through the use of inflated exchange rates. This was raised by Mr Chaudri with the claimant when he was visiting the UK on a business trip from 2 to 11 April 2024, on which trip the claimant also accompanied the directors to the Netherlands. Mr Chaudri was unhappy with the claimant saying that it reflected on them both badly.
62. On 24 April 2023 Mrs Lewis wrote to the claimant and informed him that with immediate effect the Respondent was going to '*make changes in the running and administration of the Pakistan office*' including paying all staff directly and paying rent to the landlord directly and requiring a system for staff logging in and out of the office when working and for booking annual leave. She requested copies of staff employment contracts and details of agreed salaries in Pakistan rupees (PKR) and a copy of the office lease and agreed rent in PKR and detailed information relating to the landlord, utilities, staff bank accounts and an inventory of all equipment (laptops etc) with serial numbers. She also stated that all future invoices for office expenses must be in PKR and include copies of utility/internet/service bills in PKR, with receipts for all other items and that expenses must be itemised.

63. The claimant complied with these instructions, providing information and the documents requested including offer letters and contracts of employment for the staff in Pakistan and a copy of the Tenancy Agreement. The contracts named the employer as 'Adnan Choudry as representative of [Brixtech Ltd] / [the Respondent]' with the UK office address 'for employment at its Islamabad office'. The salaries were stated in PKR and any disputes or claims under the Agreement were subject to Arbitration based on the laws of Pakistan, which was cited as the law governing the Agreement.
64. The Respondent contends that it was unaware that the contracts had been issued by the claimant in the name of the Respondent or Brixtech Ltd and contends that the staff in Pakistan were employed by the claimant in his own business or alternatively as his 'substitutes'. As found above, at the time, before receiving the contracts which she demanded of the claimant, Mrs Lewis had specifically informed him that the Respondent would pay the wages of the staff in Pakistan directly in future. After the claimant queried the means of doing so, due to the administrative difficulties for the Respondent of transferring funds directly to Pakistan, Mrs Lewis in her email of 11 May 2023 confirmed that the mechanism of payment of wages (and rent, utilities etc) would continue to be paid to the claimant to distribute locally to staff and that "*as all employment contracts have been already signed by you we will continue to honour that relationship and agreement*".
65. On balance, I find that staff were recruited by the claimant on behalf of the Respondent, to work as a back office operation supporting the Respondent's UK business. The claimant managed the Islamabad office and the staff who were dedicated to the Respondent's business, all of whom worked under a local employment agreement with the Respondent, based in Pakistan and governed by Pakistan law. The Respondent paid all wages and associated costs of the Pakistan office. Though recruitment and the day to day running of the office was managed by the claimant in Pakistan, the Respondent had an expectation of control over the office and staff and exercised that control including involvement in decisions on dismissal of one member of staff (p.168) and in particular in April 2023, those actions as outlined above, and in May 2023 the eventual closure of the Pakistan office and termination of all staff contracts with payment of notice in accordance with their contracts of employment. I find that such actions are inconsistent with the staff in Pakistan being employees of the claimant in his own business.
66. In respect of any other work or clients of the claimant, during the relevant period (January 2022 to May 2023) there were two introductions made by Mr Chaudri of friends of his to the claimant, one for a one off piece of work for some 'website help' that the claimant was able to refer to a local contractor to complete for a fee of £250 and one a query on outsourcing services from Pakistan for Social Media management. On the latter, advice on outsourcing to Pakistan was provided by the claimant, based on and with reference to the Respondent's experiences and the potential expansion of 'our office', raising the possibility of sharing office space with

them, if they decided to take on staff. In the event, the proposal was not pursued and I do not find that these two examples are significant or inconsistent with the findings in relation to the staff in Pakistan being the Respondent's back office operations in Pakistan.

67. On 11 May 2023 the Respondent sent to the claimant a 'self employed contractor agreement' which included provisions that any workers engaged by the claimant in providing services to the Respondent were employees of the claimant as a self employed and independent contractor. I find that this agreement was drafted retrospectively and did not reflect the position, based on my findings above, of the arrangements already in place and operating at that time, in respect of the staff working in the Pakistan office and find that in any event, the proposed contractor agreement was never agreed and put in place.
68. On receiving the contractor agreement, the claimant contended that the Respondent was seeking to change his status from an employee to that of a self employed contractor. A dispute arose between them over the contractor agreement and from the Respondent's perspective the claimant's alleged refusal to sign this, and from the claimant's, his contention that the Respondent's actions were an attempt to limit his ability to do the work he had been carrying out for the companies 'since 2020' and to force him to 'resign from his employment' (the claimant's email dated 22/5/23 p.294 to 296).
69. On 23 May 2023, the claimant was invited to a virtual meeting with Mr Rattlidge and Mrs Lewis and he was informed that his 'temporary working arrangement' with the Respondent was terminated with immediate effect, as confirmed in writing by email by Mrs Lewis that day. The claimant was instructed to serve notice to all members of staff in the Pakistan office and that they were to cease work immediately but would be paid a period of notice to 30 June 2023. He was further instructed to provide an itinerary of all hardware owned by the Respondent and to make arrangements for its return to the UK and provide passwords/access to all websites/logins/email addresses etc. Subsequently he was instructed that staff could remove laptops and the majority of the staff were subsequently re-engaged by the Respondent through remote working platforms as freelance consultants.
70. There was further correspondence between the claimant and Respondent during May and June 2023 including on the payment of the final invoices raised by the claimant and deductions made in respect of some equipment left in the office in Pakistan. After initially requiring the return of all equipment owned by the Respondent to be shipped to the UK (save for laptops retained by the staff at the Respondent's direction), the Respondent took the decision to leave 'laptops, furniture and equipment' in the office in Pakistan and deducted a sum 'to compensate for the value of this' from the claimant's final invoice (email to the claimant dated 30/6/23 p312). I make no further findings in respect of this deduction, as relevant to the issues I must decide today.

**Law**

**Territorial scope – Employment Rights Act 1996**

71. The Employment Rights Act 1996 (ERA) is silent as to its territorial scope. The general rule that emerges from the case law is that the ERA applies only to employment in Great Britain; exceptionally, however, it can extend to employees working abroad.
72. I was referred to a list of authorities by the Respondent's Counsel that I address below including *Lawson, Duncombe, Ravat* and *Todd v British Midland Airways Ltd [1978] ICR 959*. The claimant also referred me to a decision of the Employment Tribunal in *Mr Claus Bodker v Mould CAM Ltd 1400577/2023* which I considered as consistent with the key authorities and as a Tribunal (first instance) decision not giving rise to any new precedent or points of principle.
73. In *Jeffrey v British Council [2019] ICR 929* Underhill LLJ summarised the key principles in the case law on territorial jurisdiction, in that generally it can be said that Parliament intended that an expatriate worker meaning someone who lives and works abroad, even if they are British and working for a British employer, will be subject to the employment law of the country in which they work rather than the law of Great Britain. This is referred to as 'the territorial pull of the place of work'. However, there will be exceptional cases where there are factors connecting the employment to Great Britain and British employment law that have sufficient pull in the opposite direction to justify the conclusion that Parliament must have intended the employment to be governed by British employment law.
74. In *Lawson v Serco Ltd and two other cases [2006] ICR 250, HL*, Lord Hoffmann identified three categories of employees: (1) employees working in Great Britain at the time of dismissal; (2) peripatetic employees such as airline pilots whose 'base' (the place where they start and end assignments) should be treated as their place of employment; (3) expatriate employees working and based abroad, who may in exceptional circumstances be entitled to claim unfair dismissal.
75. Lord Hoffmann gave two examples of the third category of an expatriate employee working and based abroad. The first was an employee posted abroad by a British employer for the purposes of a business carried on in Great Britain — for example, a foreign correspondent on the staff of a British newspaper. The second was an expatriate employee of a British employer 'who is operating within what amounts for practical purposes to an extraterritorial British enclave in a foreign country'. There might be other qualifying situations but employees would need to show 'equally strong connections with Great Britain and British employment law'.
76. Lord Hoffmann considered that the circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of the ERA and 'very unlikely' that someone working abroad would be covered unless they were working for an employer based in Great Britain, but that by itself would not be enough.

77. It is generally accepted that the principles set out in the **Lawson** case apply not only to unfair dismissal but to all the other provisions of the ERA, although this was not a point decided by the House of Lords in that case.
78. Later cases have found that it is not always necessary to slot employees into one of Lord Hoffmann's three broad categories. In **Duncombe v Secretary of State for Children, Schools and Families (No.2) [2011] ICR 1312, SC**, Lady Hale stated that, to be covered by the ERA, the employment relationship of an employee who is working or based abroad must have 'much stronger connections' both with Great Britain and with British employment law than with any other system of law. Relevant factors in that case indicating a sufficiently strong connection with British employment law were that their employer was the UK Government; their contracts were governed by English law; and they were employed in international enclaves governed by international agreements.
79. In **Ravat v Halliburton Manufacturing and Services Ltd [2012] ICR 389, SC**, Lord Hope said the Lawson categories were examples of the application of the general principle and held that "in order for there to be jurisdiction, an employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law....it will always be a question of fact and degree as to whether the connection between Great Britain and the employment relationship is sufficiently strong to overcome the general rule that the place of employment is decisive. The case of those who are truly expatriate because they not only work but also live outside Great Britain requires an especially strong connection with Great Britain and British employment law before an exception can be made for them."
80. The question is whether the connection between the circumstances of the employment and Great Britain and British employment law are sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the employment tribunal to deal with the claim.

### **Employment Status**

81. *Employment Rights Act s.230 provides:*  
“(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.  
(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.”
82. The courts and tribunals have developed many tests over the years aimed at identifying a contract of service and distinguishing between employees and the self-employed, or the third category of workers.
83. The general starting point for key cases on employment status are: **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National**

**Insurance [1968] 1All ER 433**; the relevance of which was confirmed by the Supreme Court **in Autoclenz Ltd v Belcher and Ors [2011] ICR 1157 SC** where Lord Clarke called it ‘the classic description of a contract of employment’. The Ready Mixed formulation of a multiple test to decide employment status is found in three key questions:

- 83.1. did the worker agree to provide his or her own work and skill in return for remuneration?
- 83.2. did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of employer and employee?
- 83.3. were the other provisions of the contract consistent with its being a contract of service?

84. In subsequent cases these have formed the basis of recognising the need for an ‘irreducible minimum’ of obligation on each side, comprising personal service, control and mutuality of obligation; it is also recognised that the third question requires the court or tribunal to examine all relevant factors, both consistent and inconsistent with employment, and determine, as a matter of overall assessment, whether an employment relationship exists.

85. I was also referred to the case of **Pimlico Plumbers Ltd v Smith [2017] IRLR 323** in relation to the issue of substitution and delegation, which is one of the relevant factors in determining whether there is a requirement for personal service and/or any ability or right of substitution or delegation to others. Also to the case of **Massey v Crown Life Insurance [1989] 2 All ER 576** as authority that where there is a genuine agreement to be ‘self-employed’ by which the individual gains some benefit, he cannot afterwards say it is something else in order to claim that he has been unfairly dismissed.

86. In **Hall (Inspector of Taxes v Lorimer [1994] ICR 218 CA**, the Court of Appeal warned against following a check list approach and that the object of the exercise is to ‘paint a picture from the accumulation of detail’ and evaluate it as a whole.

87. In **O’Kelly and ors v Trusthouse Forte plc [1983] ICR 728 CA** the Court of Appeal held that although the question of employment status was one of law in the overall sense, its determination depended on the values attached to the individual facts of the case. The Court recognised that in the majority of cases, the determination of an individual’s employment status would depend not only on written documentation but also on an investigation and evaluation of the factual circumstances in which the work was performed.

## **Conclusions**

88. In reaching my decision, I have considered the relevant legislation and the summary of the law and case authorities included above and to which I was referred. I will address each of the agreed issues in the case



separately, but each conclusion has been drawn having taken account of the whole of the evidence in the case, both written and oral.

89. I had written and oral submissions from Ms Akers for the Respondent and oral submissions from the Claimant who also referred me to arguments made in his witness statement on the issues before me and both referred me to case authorities mentioned.

**Territorial Jurisdiction**

**Did the Respondent reside or carry on business in England and Wales?**

90. It is not in dispute that the Respondent was incorporated and carried on its business in England and Wales.

**Did one or more of the acts or omissions complained of take place in England and Wales?**

91. The claimant complains that he was unfairly dismissed and also brings a claim for unlawful deductions from wages. The respondent's decision to terminate the working arrangements with the claimant, including a decision to close the back office operations managed by the claimant in Pakistan, was communicated to the claimant in a virtual meeting held on 23 May 2023, with Mr Rattlidge and Mrs Lewis joining the call from England and the claimant from Islamabad, Pakistan. The decision was confirmed by Mrs Lewis by email on 23 May 2023.
92. I have made findings above that at all material times the claimant was resident and based and working in Pakistan. The claimant was working in Pakistan at the relevant time and in joining the virtual meeting on 23 May 2023, he did so from Pakistan. In closing the Pakistan office and dealing with wrapping up arrangements relating to the Pakistan staff and premises, the claimant remained in and concluded this work in Pakistan. In considering this question, I conclude that it cannot be said that the decision communicated to terminate the working arrangements during the virtual meeting and its termination at the end of May, took place in England and Wales.
93. All subsequent communications between the claimant and respondent were by email. This included communications over the final invoice raised by the claimant and deductions for equipment left in Pakistan made by the respondent, which the claimant complains is an unlawful deduction from wages. In this matter, invoices were raised by the claimant from his address in Islamabad, Pakistan for work carried out by him there. The respondent paid the invoices by transfer to the claimant's UK bank account. The equipment to which the deduction relates is equipment left in the office in Pakistan, where the claimant remained.
94. Whilst the Respondent processed invoices and payments in the normal course in Great Britain, nonetheless in so far as this forms one of the Claimant's complaints, the deduction from the final invoice prior to its payment, which the claimant claims is unlawful, nonetheless relates to

equipment used and located at the office premises in Pakistan. I conclude that in the circumstances this does not denote a sufficiently strong connection to say the act complained of took place in Great Britain over its taking place in Pakistan, in relating to equipment located and left there.

As

**Does the claim relate to a contract under which the work is or has been performed partly in England and Wales?**

95. Based on my findings above, I have found that the Claimant was resident, based and working in Pakistan prior to and throughout the period that he carried out work for the Respondent. This includes work first performed as a paid 'freelancer' from October/November 2021, which activities were formalised in January 2022 to include 'marketing and general business services' as stated on his invoices to Brixtech and the respondent raised in January 2022. From March 2022 until arrangements were terminated in May 2023, this also included recruiting and managing staff in various roles for the Respondent's back office operations based in the Islamabad office.
96. In this period there were three business trips to the UK, combined with social visits with family including his brother Dr Choudri and on the longest visit, joining the directors on a business trip to the Netherlands in relation to an acquisition of a new company. Having considered that the claimant was wholly based and working in Pakistan, with just three family and business trips to the UK (and Europe) in May 2022, November 2022 and April 2023, I conclude that the claim does not relate to a contract under which work is or has been performed partly in England and Wales. The claimant did not carry out or perform work in England and Wales to any material extent, the occasional business visits to the Respondent, not being sufficient to establish this.

**Is there a connection with Great Britain, which is at least partly a connection with England and Wales, which gives the Tribunal jurisdiction?**

97. In considering this question, I take account of my findings above that throughout the period that he carried out work for the Respondent, the claimant was resident, based in and working in Pakistan, where he had organised his affairs and been permanently based and resident since at least 2017.
98. I remind myself that in accordance with the case authorities and the three broad categories considered in *Lawson*, he was not working in Great Britain at the time the working arrangements were terminated. He is not a peripatetic employee who travelled abroad from a base in Great Britain, as he no longer has a home base in Great Britain and is resident and permanently based in Pakistan where he lives with his wife. Though not limited to these examples nor is he an expatriate in the sense of the examples described by Lord Hoffman, he had not been 'posted abroad' by the Respondent as he was already based in Pakistan where he was resident and had his own business interests, before he began supporting his brother and/or later working for Brixtech and the Respondent from

January 2022 until May 2023. Neither was he working in a 'British enclave' abroad.

99. Whilst the Respondent is incorporated and carries on its business in Great Britain and so at least partly a connection, Lord Hoffman noted that working for an employer based in Great Britain, by itself, would not be enough to establish a sufficient connection to give the Tribunal jurisdiction, and that there must be something more, which I discuss further below.
100. **Does the employment relationship have much stronger connections both with Great Britain and with British employment law than with any other system of law for claims under the Employment Rights Act 1996 ("ERA 1996")?**
101. In *Duncombe* Lady Hale cautioned against trying to 'torture the circumstances' to make it fit one of the examples given by Lord Hoffman, as they were only examples of the application of the general principle. The question I must answer as set out above, is that of the general principle articulated by Lord Hoffman and as expressed in *Ravat*, that in the case where someone is 'truly expatriate' as here, is the connection between the circumstances of the employment and Great Britain and British employment law, sufficiently strong to enable it to be said that it would be appropriate for the employee to have claims for unfair dismissal (or other employment claims under the ERA) in Great Britain. This is a question of fact and degree.
102. Given my findings, the first connection in the case is one of a family relationship, between the claimant, who was already resident and based in Pakistan by 2017 and his younger brother, Mr Chaudri, who is based in the UK and was looking to start a new business here. I have considered that the claimant is a British citizen and was educated and married in the UK and has family here and also his long working history and former business interests in the UK. I also considered and it is of relevance that he remarried in 2005 and his wife is resident in Pakistan and worked there and that from 2007 his business interests were predominately in Pakistan including becoming owner of the School where his wife worked. As such, his background and prior history living and working in the UK and family connection to his brother does not in itself, give rise to a sufficiently strong connection between his work for the Respondent in Pakistan with Great Britain, whereas his living and working in Pakistan I conclude did give rise to a stronger connection with his work for the Respondent, as I explore below.
103. The Respondent, in formalising the claimant's marketing activities for Brixtech and for the Respondent after its acquisition in December 2021, also took the business decision for economic reasons and following discussions with the claimant, who promoted the opportunities for outsourcing or off-shoring work to Pakistan, to have a number of roles and back office operations based in Islamabad in Pakistan. Mr Chaudri projected costs for those proposals in December 2021 on acquiring the

Respondent, and they were subsequently implemented from March 2022 onwards.

104. In the circumstances, I conclude that the fact that the claimant was resident and based in Pakistan is a strong factor and of relevance to the claimant's work for the Respondent including his recruitment and management of the staff and the back office operations in Pakistan. Also of significance to this, is that as a resident of Pakistan, he was able to rent residential office space there on behalf of the Respondent, who did not have the standing to do so and to distribute wages in local currency to staff and pay all overheads and office expenses that were met by the Respondent but which again did not otherwise have the administrative means to pay the wages or office overheads directly. The claimant also drew up local employment contracts between the staff in Pakistan and Brixtech and/or the Respondent, as employees based in the Islamabad office and which were governed by the Law of Pakistan.

105. There was no requirement for the claimant to carry out any marketing activities or other work in or from Great Britain and only occasional business trips to the UK were undertaken in the relevant period. These also included family visits and accompanying the directors on a European trip in relation to a new acquisition, which I concluded above, do not constitute working in Great Britain to any material degree. The claimant's work was carried out in Pakistan and his being resident and based there was a significant factor in relation to his work in managing the Pakistan office for the Respondent and as such I conclude that the circumstances of the working relationship had a much stronger connection to Pakistan.

106. I also considered that the claimant ordered his affairs to suit his circumstances: he paid taxes in Pakistan and although he was paid in sterling, I found no evidence before me that he paid taxes on any income from the Respondent in the UK; he did not spend sufficient time in the UK to participate in any employment benefits; in formalising working arrangements in January 2022, he proposed that he provide his services as a self-employed contractor and that arrangement had not been changed or revisited until the dispute arose in May 2023 over the draft contractor agreement, which was unresolved; and at the time of termination of the arrangements, he rendered his final invoices as a contractor accordingly.

107. Beyond the fact that the work undertaken in Pakistan was for the respondent's business that it carried out in the UK, I conclude that there was not the something more to establish either an 'especially strong' nor a sufficiently strong connection between the circumstances of the claimant's engagement or 'employment' with the Respondent and Great Britain and British employment law. In the circumstances outlined in my findings and conclusions above, I find the connection and 'pull' of the place where the claimant lived and worked in Pakistan to be stronger than that of Great Britain. I conclude that it cannot be said that in the circumstances, Parliament would have intended the claimant to have a claim for unfair

dismissal or unlawful deduction from wages under the ERA in Great Britain.

108. As such, considering all of the evidence and applying the law to the facts found, I conclude that the Tribunal does not have territorial jurisdiction to hear the claims.

109. **Does the employment contract confer jurisdiction on another country?**

110. I note that there was no written contract with the claimant at the material time. A self employed contractor agreement was proposed by the respondent in May 2023, which was not agreed or signed by the claimant and I found was accordingly of limited value in respect of the arrangements that were in place at the material time.

### **Employment status**

#### **Is the claimant an employee of the respondent as defined in section 230(1) and (2) of the Employment Rights Act 1996?**

111. Given my conclusion on the matter of territorial jurisdiction, the claim goes no further. However, in light of my findings above, I conclude that applying s.230 ERA and relevant case law above and taking account of the evidence and my findings and the factual matrix, the claimant was not an employee of the respondent at the material times. It was the intention of both parties in formalising the working arrangement that he continue to work as a self employed contractor. He did not benefit from any terms consistent with employment such as paid holiday, employee benefits or company policies or procedures. He could provide services to others but did not do so to any great extent during the relevant period. He worked autonomously with little control exercised over how and when (subject to aligning with UK working hours) he carried out his work in providing his services until a dispute arose and the events of April/May 2023, when the Respondent sought more oversight of the operation of its back office in Islamabad. Looking at the picture as a whole, I conclude that he was working as a contractor providing marketing activities and business services in managing the Respondent's Pakistan office, and that an agreement reached with the Respondent, as proposed by him in his email of 20 January 2022, reflected the clear intentions of the parties at the time, taking account also of the claimant's preference in organising his own affairs including in relation to tax, as outlined in my findings in paragraphs 22-54 and specifically at 34 to 36 and 51 above.

#### **If so, had the claimant been employed by the respondent for at least two years when their employment ended?**

112. Given my conclusion on the matter of territorial jurisdiction, the claim goes no further. However, in light of my findings above, that the freelance working relationship (beyond that of the early support based on their family relationship) began with Brixtech in October 2021 and the working relationship with the Respondent (and Brixtech) was formalised in

January 2022, even if I had found that the claimant was an employee of the Respondent, he did not have two years' qualifying service at the time of termination of the arrangements in May 2023.

**Worker Status**

**Whether the claim of unauthorised deduction from wages should be dismissed because the claimant is not entitled to bring it if they were not a worker of the respondent as defined in section 230(3) of the Employment Rights Act 1996?**

113. Given my conclusion on territorial jurisdiction, the claim for unlawful deductions under the Employment Rights Act 1996 goes no further, and I make no further findings or conclusions in this regard.

**Strike out or deposit order**

**Should the claim or any part of it be struck out because it has no reasonable prospect of success?**

114. Given my conclusion on the matter of territorial jurisdiction, the claim goes no further and I do not need to consider the Respondent's application.

**Does the claim or any part of it have little reasonable prospect of success? If so, should the claimant be ordered to pay a deposit of between £1 and £1000 as a condition of continuing with it?**

115. Given my conclusion on the matter of territorial jurisdiction, the claim goes no further and I do not need to consider the Respondent's application.

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Employment Judge K Hunt

Date 10 June 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 11 June 2024

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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