

# Gig economy: Pimlico Plumber found to be a worker

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A Pimlico Plumber was held to be a worker despite his contract labelling him as an independent contractor. This gives him a right to be paid holiday and the national minimum wage, amongst other things.

Mr Smith was a plumber with Pimlico Plumbers for over 5 years. Around 4 months after Mr Smith suffered a heart attack, Pimlico terminated his contract. Mr Smith brought claims in the Employment Tribunal claiming unfair dismissal, wrongful dismissal, sick pay, holiday pay, unlawful deductions from wages and disability discrimination.

Before the Employment Tribunal could hear those claims, it had to determine whether Mr Smith was in fact an employee or a worker rather than a self-employed person in business on his own account. In order to do so, it had to look at the contractual and factual relationship between him and the company. Among the factors taken into consideration were the following:

- Mr Smith's contract said that he was under no obligation to accept work, and that Pimlico was not obliged to give him work, but that Mr Smith should complete a minimum of 40 hours' work per week.
- Whilst Mr Smith would drive a Pimlico Plumbers branded van and wear a uniform, he was obliged to provide his own tools and materials.
- Mr Smith was VAT registered, completed tax returns on the basis that he was self-employed and would submit invoices to Pimlico in order to receive payment. He would lose out on pay if a customer failed to settle a bill and he had to provide his own liability insurance.
- The contract did not expressly allow Mr Smith to send in a substitute to perform work on his behalf. However, it was found on the evidence that the plumbers would swap assignments between themselves.

Mr Smith's contract also contained restrictive covenants, including one which prevented him from rendering plumbing services in the Greater London area for 3 months after the termination of his employment.

The Court of Appeal held that Mr Smith was a worker rather than a self-employed contractor (however, he was not an employee so not entitled to unfair dismissal protection). His contract, and the reality of the working relationship, required him to provide personal service. In addition, the degree of control Pimlico had over Mr Smith's work was inconsistent with a client-contractor relationship.

It has been reported that Pimlico Plumbers is considering appealing this judgment, though it follows several high-profile cases in recent months challenging the mis-labelling of workers within the 'gig economy' as self-employed persons.

*Pimlico Plumbers Ltd and Mullins v Smith* [2017] EWCA Civ 51

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