

# A landmark ruling (without surprise): Supreme Court dismisses Pimlico Plumbers' appeal

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The Supreme Court has today handed down its eagerly anticipated Judgment on the employment status of plumber, Gary Smith. In a unanimous verdict, the Supreme Court has dismissed Pimlico Plumbers' appeal and has upheld previous rulings that Mr Smith was in fact a worker and not a self-employed contractor.

## Key Issues

As in the appeal before the Court of Appeal (you can read our previous alert [here](#)), the key issues that the Supreme Court had to grapple with were:

- Whether Mr Smith was under an obligation to personally perform work; and
- Whether Pimlico could rightly be categorised as a client or customer of Mr Smith.

In its decision, upholding the original Tribunal's approach to the evidence and the majority of its findings of fact, the Supreme Court has held that:

- Although Mr Smith had a limited right of substitution where he had quoted for a job but no longer wished to undertake it - he could provide a substitute so long as that person came from within Pimlico's ranks - this was a substantially fettered right. Accordingly, the dominant feature of Mr Smith's contract remained an obligation to give personal service.
- There was an overarching umbrella contract in place between Mr Smith and Pimlico which straddled the different individual assignments undertaken by Mr Smith for Pimlico. Accordingly, the continuing mutual obligations between the parties pointed towards worker status.
- There was ample evidence before the original Tribunal from which it had reasonably concluded that Pimlico was not Mr Smith's client or customer. Not only was Mr Smith substantially integrated into Pimlico's operations but he was also subject to Pimlico's control in a number of regards, including:
  - o A requirement to wear Pimlico branded uniform, drive a Pimlico branded van (with a tracker) and carry a Pimlico ID card;
  - o Being subject to stringent terms about when and how much Pimlico had to pay him; and
  - o Provisions in his contract which were broadly inconsistent with self-employment including references to "wages", "gross misconduct" and "dismissal", as well as a full suite of restrictive covenants.

In view of the above, the Supreme Court has ruled that the original Tribunal had been entitled to conclude that Mr Smith was a worker and not self-employed in business on his own account.

## What this means for employers

The decision reached by the Supreme Court does not break any new legal ground or redefine any of the key legal tests and principles which are engaged in deciding if someone is an employee, worker or self-employed. Indeed, given the direction of travel of recent employment status cases coming before the Tribunals and Courts, the decision does not come as a particular surprise.

However, as the most recent and highest level decision in the field of employment status, it serves to further underscore the potential challenges facing other employers, including those in the "gig economy", whose contracts with individuals do not reflect the reality of the relationship on the ground - and the willingness of the Courts to look behind the written arrangements

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