

Townsend v Howard Kennedy LLP Case No: 2301003/2023

The claimant was an equity member of an LLP. He brought a claim against the LLP for unauthorised deductions from wages under Part II of the Employment rights Act 1996 (ERA), and holiday pay. The Employment Tribunal dismissed the claims.

Both parties accepted that the claimant was a worker on the basis of *Bates van Winkelhof v Clyde and Co LLP* 2014 ICR 730. However, the tribunal held that he was not an employee, because of the common law distinction between a member of an LLP (or a partner) and an employee. Since he was not in employment, the payments made to him were not 'wages' as defined by s27 of the ERA, because they were not an 'emolument referable to his employment, and therefore there were no unauthorised deductions from wages under s13. The payments were instead payments made were an advance of an anticipated profit share due to him as an LLP member. The Tribunal therefore held that it had no jurisdiction to hear the claim under the ERA.

The Tribunal noted that the claimant was able to make a claim as a worker in respect of holiday pay under the Working Time Regulations 1998, but held that there had in fact been no underpayment of holiday pay.

Donnellan v Ward [2024] EWHC 2304 (Ch)

This case involved a dispute as to whether a partnership to carry on the business of redeveloping properties existed.

The court noted that s1(1) of the Partnership Act 1890 provides that 'Partnership is the relation which subsists between persons carrying on a business in common with a view of profit', and held that partnership was the result of an express or implied agreement, even in those cases where the creation of a partnership was not intended (*Achom v Lalic* [2014] EWHC 1888 (Ch)).

It held that there was no reliable contemporaneous documentary evidence of the existence of a partnership. In particular, there was no attempt to prepare or agree accounts, which meant that there was no way in which profits could be calculated. Furthermore, the recorded extracts of meetings were so short that they needed to be approached with great care, particularly as it was not clear which properties were being referred to, and they post-dated the dispute. The court did not accept the claimant's argument that he did more work than he would have done had there been no partnerships; he was paid commission for arranging mortgages and received other financial rewards, and there was no evidence of him carrying out other significant work. The court concluded that there was no agreement for a partnership.

Elspeth Berry
Reader in Law, Nottingham Law School,
Nottingham Trent University
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