

THE PIMLICO PLUMBERS CASE: “EMPLOYED” OR “SELF-EMPLOYED”?

By Alison Fielden & Co

Amid all the distractions of The World Cup, Brexit, President Trump and Wimbledon, not everyone may have spotted an interesting decision from The Supreme Court which impacts further on the so-called “gig economy”.

The decision will allow plumber Gary Smith to take action for redress against Pimlico Plumbers Ltd as a “worker”. He had been with the company for almost six years.

Pimlico Plumbers, as readers may know, is a well-known London-based business which used (it argued) “self-employed” contractors as the lifeblood of its workforce. It is led by its charismatic chief executive, Charlie Mullins.

In the recent judgment, the Law Lords backed the initial employment tribunal and the Court of Appeal in ruling that Mr Smith’s work met the definition of “employment” under statute. In the lead judgment, Lord Wilson said that Mr Smith should be considered a “worker” and entitled to numerous rights, including the right to holiday pay and rights not to be the subject of unlawful discrimination nor to have unlawful deductions made from his pay.

An important consideration was whether Mr Smith had undertaken to perform personally his services for Pimlico Plumbers. A second question was whether he actually worked for the company, or whether the company was his client or customer.

On the first matter, it was held that the dominant feature of Mr Smith’s contract was an obligation of personal performance (he had a limited facility to to turn down jobs, but only by substituting himself with another Pimlico person)

On the second question, it was held that Pimlico imposed such a tight control over his work attire, as well as severe payment terms and restrictions that it was right to conclude that Pimlico could not be regarded as a client or customer of Mr Smith.

Some commentators have argued that Pimlico Plumbers and other similar organisations may now have to change their model or they will face multiple legal challenges. This case may also influence other appeals to be heard by the higher courts later this year e.g. the Uber and City Sprint cases.

These are interesting times in the Employment Law world!

For legal advice on all aspects of Employment Law, please call Martin Hopwood or Alison Fielden on 01285 653261 (for further information or to book an appointment).