



**EMPLOYMENT TRIBUNAL**

BETWEEN

CLAIMANT

AND

RESPONDENT

Mr J. Langton

Amdocs Systems Group  
Limited

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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Held at: BRISTOL

On Monday, the 15<sup>th</sup> July 2019

Employment Judge: Mr D. Harris (sitting alone)

Representation:

For the Claimant: Mr Douglas Leach (Counsel)

For the Respondent: Mr Jonathan Cohen QC (Counsel)

## **JUDGMENT**

- 1. There shall be judgment for the Claimant in his claim that there has been an unlawful deduction from his wages, contrary to section 13 of the Employment Rights Act 1996, arising from the Respondent's failure to increase the payments made to the Claimant under the Respondent's income protection scheme by 5% every year after the payments under the scheme had been paid continuously for 52 weeks from the 1<sup>st</sup> November 2009.**
- 2. The claim shall be relisted for a remedies hearing at the first available open date after the 26<sup>th</sup> August 2019 with a time estimate of 1 day.**

## **REASONS**

### **The claim**

1. By his Claim Form presented to the Tribunal on the 9<sup>th</sup> March 2018, the Claimant brought claims of disability discrimination, unlawful deduction from wages and breach of contract.
2. By a Judgment dated the 22<sup>nd</sup> November 2018, the claims of (i) disability discrimination, (ii) unlawful deduction from wages relating to the failure of the Respondent to make pension contributions, (iii) breach of contract relating to the failure of the Respondent to make pension contributions and (iv) breach of contract generally were dismissed upon the claims being withdrawn by the Claimant.

3. Following the dismissal of the claims mentioned in paragraph 2 above, the sole remaining claim brought by the Claimant is one of unlawful deduction from wages relating to the Respondent's failure, on the Claimant's case, to comply with the terms of an Income Protection Scheme under which benefits paid to the Claimant under the Scheme would be increased by 5% every year after a period of 52 weeks of continuous payment of the benefits.
4. The Respondent disputes the Claimant's claim. The Respondent denies that there has been an unlawful deduction from wages as alleged by the Claimant.

#### The factual background

5. There was little by way of factual dispute in this case. The following chronology of events was not disputed.
6. In 2003 the Claimant was approached by a recruitment agent working for a company called Cramer Systems Limited and was invited to apply for a job as a Test Engineer with the company. The Claimant applied for the position, was interviewed and was subsequently offered the post by way of a letter dated the 25<sup>th</sup> July 2003.
7. The relevant passages from the offer letter dated the 25<sup>th</sup> July 2003 are as follows:

**Following your recent interview, I am delighted to offer you the position of Test Engineer with Cramer Systems Limited.  
Your employment will commence on [start date to be confirmed] ...  
Your remuneration package will be as follows:  
An annual salary of £25,000;  
A pension contribution of 6% of your annual salary if you wish to join the contributory scheme;  
Private healthcare for you and your immediate family;**

Life insurance to 4 times basic annual salary;  
An income protection plan;  
A proposal to grant you 400 options in the Cramer Systems Group Limited Enterprise Management Incentives Scheme will be made to the Remuneration Committee of the Board at the first quarterly meeting following your start date. The number of options granted, type of option (whether EMI or Unapproved) and price are all subject to confirmation by the Remuneration Committee.

...

**Income Protection and Sickness Payments**

Cramer will pay staff on sick leave their full salary (less any statutory sick pay) for the first 13 weeks that they are ill. Thereafter, an income protection plan has been established that will pay employees 75% of their annual salary, less basic rate state long-term incapacity benefit, up to their 60<sup>th</sup> birthday.

Please see the attached "Statement of Benefits" for further information about the above benefits.

8. Attached to the offer letter was a document entitled "*Statement of Benefits*". The trial bundle contained two versions of this document. It was not clear which version had been attached to the offer letter sent to the Claimant on the 25<sup>th</sup> July 2003, but both versions contained identical wording concerning an income protection scheme established by Cramer Systems Limited for the benefit of their employees. The wording was as follows:

**INCOME PROTECTION SCHEME & GROUP  
LIFE ASSURANCE SCHEME**

In order to protect you and your family from the potential loss of income resulting from long term sickness or disability, the company have established an Income Protection Scheme with Sun Life Financial of Canada.

In the event of your premature death, the company have established a Group Life Assurance Scheme with Royal Sun Alliance.

**When am I included?**

You are included in both Schemes if you are a permanent employee from the day you commence employment with Cramer Systems.

You will cease to be included in the Schemes at age 60, or on ceasing to satisfy the eligibility conditions.

**What benefits are provided?**

Under the Group Income Protection Scheme, the payment of benefit commences after the first 13 weeks of incapacity. You will be asked to provide medical certification for the insurance company in respect of any incapacity lasting longer than this period.

After benefits have been paid continuously for 52 weeks the benefit will increase by 5% every year, until you return to work. In this way, your benefits will have a degree of protection from inflation. Under the Group Life Assurance Scheme, a payment would be made to your Estate, or a nominated individual, following your death.

**How much is the benefit?**

For the Group Income Protection Scheme, the maximum initial benefit is 75% of your salary less a deduction in respect of the State benefit for a single person.

For the Group Life Assurance Scheme, the benefit is four times your annual basic salary.

**Do I have to pay towards the benefit?**

No. Cramer pays the whole cost, which does not count as part of your income for tax purposes.

**What happens if I leave the company?**

Should you leave employment with Cramer Systems your cover in both Schemes automatically ceases on the date that you leave.

**NOTES**

The operation of both Schemes is governed by the terms of the Group policies, and nothing in this summary will override the terms of that document.

9. In addition to the offer letter and the statement of benefits, the Claimant was provided with a written “contract of service”, dated the 25<sup>th</sup> July 2003, which contained the following provisions:
  6. **The Employee is entitled to the following benefits to the extent and in the circumstances set out in the Manual and outlined in the employee’s letter of offer:**
    - i. **Salary Protection Plan**
    - ii. **Pension Fund Participation**
    - iii. **Life Assurance**
    - iv. **Equity Participation**
    - v. **Private healthcare**
  7. **Provisions relating to absence through illness shall be those set out in the Manual.**
  - ...
  11. **Where the rights and liabilities of the parties are set out in the Manual they shall be varied whenever and in the manner set out in any amendments made to the Manual by the Company. Such amendments will be communicated to each employee individually.**

10. The Claimant accepted the offer of employment and began work for Cramer Systems Limited on the 1<sup>st</sup> September 2003.
  
11. On the 2<sup>nd</sup> August 2004, Cramer Systems Limited wrote to the Claimant to confirm a change to his salary. The letter informing the Claimant of that change also stated: "*Other terms and conditions are set out in your original Contract of Employment, a copy of which is in your possession.*"
  
12. On a date unknown in 2004, Cramer Systems Limited circulated to employees, including the Claimant, a document entitled "*Rewards, Benefits & Environment*". The document contained the following information about the income protection scheme that applied to permanent employees:

**In case you were wondering ... some questions and answers**

**Income Protection & Life Assurance**

**When am I included?**

**You are included in both Schemes if you are a permanent employee from the day you commence employment with Cramer.**

**You will cease to be included in the Schemes at age 60, or on ceasing to satisfy the eligibility conditions.**

**What benefits are provided?**

**Under the Group Income Protection Scheme, the payment of benefit commences after the first 13 weeks of incapacity. You will be asked to provide medical certification for the insurance company in respect of any incapacity lasting longer than this period.**

**After benefits have been paid continuously for 52 weeks the benefit will increase by 5% every year, until you return to work. In this way, your benefits will have a degree of protection from inflation.**

...

**How much is the benefit?**

**For the Group Income Protection Scheme, the maximum initial benefit is 75% of your salary less a deduction in respect of the State benefit for a single person.**

...

**Do I have to pay towards the benefit?**

**No. Cramer pays the whole cost, which does not count as part of your income for tax purposes.**

**What happens if I leave the company?**

**Should you leave employment with Cramer Systems your cover in both Schemes automatically ceases on the date that you leave.**

13. On the 12<sup>th</sup> September 2005 the Claimant was promoted to the position of Test Analyst. The letter informing him of the promotion also stated: *“Other terms and conditions are set out in your original Contract of Employment, a copy of which is in your possession.”*
14. On the 23<sup>rd</sup> May 2006 the Claimant was promoted to the position of Test Analyst. The letter informing him of the promotion also stated: *“Other terms and conditions are set out in your original Contract of Employment, a copy of which is in your possession.”*
15. On the 15<sup>th</sup> August 2006 Cramer Systems Limited was acquired by the Respondent and a process of integration commenced. The Claimant described that process as slow, which appeared to be a fair assessment.
16. On the 15<sup>th</sup> September 2006 Cramer Systems Limited wrote to the Claimant to notify him of some changes to the terms and conditions of his employment. Those changes did not expressly affect the income protection scheme. Save for the changes referred to in the letter, it was stated that *“all other Terms and Conditions of Employment remain the same”*.
17. On the 13<sup>th</sup> July 2007 the Respondent wrote to the Claimant to confirm a change to his salary. The letter informing the Claimant of that change also stated: *“All other terms and conditions of employment (including as per your employment agreement) remain unchanged and are subject to company policy, but may be reviewed and adjusted at the company’s discretion. Please remember that your terms of employment with Amdocs are personal and confidential, and should not be discussed with others.”*

18. In or about September 2007, employees of Cramer Systems Limited attended a presentation by an HR Manager employed by the Respondent, Andrea Swinn. The Claimant, in his oral evidence to the Tribunal, had no recollection of the presentation but he accepted that he had probably been present at the presentation. The purpose of the presentation was to explain how “harmonisation” was going to be achieved as employees of Cramer Systems Limited were transferred into the Respondent’s organisation. Ms Swinn used slides at the presentation and those slides were produced in the hearing bundle [pages 208 to 228].
19. The slides produced by Ms Swinn referred to “benefit harmonisation” and an “improved benefit package for all employees” and, under the heading “*Effect on Cramer UK Employees*” the following wording appeared on one of the slides:

<b>Current Benefit Package</b>	<b>Proposed Benefit Package</b>
...	...
<b>Income Protection Insurance</b>	
<b>13 weeks 75% base salary (capped £90,000)</b>	<b>13 weeks 75% base salary (capped £90,000)</b>
...	...

20. There was a further slide [at page 215 in the hearing bundle] that indicated that the “*Overall Impact*” for Cramer employees in respect, inter alia, of income protection was that the income protection scheme, under the Respondent, was equal to the position that had been the case with Cramer Systems Limited.
21. Towards the end of the slides, the following information was provided as to how further information pertaining to the Respondent’s policies could be obtained:

**Where can I get more information?  
Employee Handbook and all UK policies will be published on Cramernet during September.**



22. On the 10<sup>th</sup> September 2007, a letter was sent to the Claimant on Cramer stationary which stated as follows:

**Amendments to your Terms and Conditions of Employment**

Further to our recent discussions, I write to confirm the amendments to your contract of employment with Cramer Systems Limited (“the Company”) which will apply with effect from 1 October 2007 (the “Commencement Date”).

From the Commencement Date, the relevant provisions in your contract of employment will be amended to read as follows:

...

**Other Employment Benefits**

**Optical & Dental Insurance**

Subject to satisfying any eligibility criteria imposed by the Company’s insurers, you will be entitled to participate in the Company’s optical & dental insurance scheme.

The Company may from time to time change the benefit provider and vary or amend the extent of the cover or the basis on which it is provided. This benefit will cease on termination of employment.

...

All of the other terms and conditions of your employment are unchanged.

23. In or about October 2007 the Claimant received a pack of documents from the Respondent, which included a document entitled “*Income Protection Scheme & Group Life Assurance Scheme*”. The document contained the following information about the income protection scheme:

In order to protect you and your family from the potential loss of income resulting from long term sickness or disability, the company have established an Income Protection Scheme with Unum.

In the event of your premature death, the company have established a Group Life Assurance Scheme with Canada Life.

**When am I included?**

You are included in both Schemes if you are a permanent employee from the day you commence employment with Cramer Systems.

You will cease to be included in the Schemes at age 65, or on ceasing to satisfy the eligibility conditions.

**What benefits are provided?**

Under the Group Income Protection Scheme, the payment of benefit commences after the first 13 weeks of incapacity. You will be asked to provide medical certification for the insurance company in respect of any incapacity lasting longer than this period.

After benefits have been paid continuously for 52 weeks the benefit will increase by 5% every year, until you return to work. In this way, your benefits will have a degree of protection from inflation. Under the Group Life Assurance Scheme, a payment would be made to your Estate, or a nominated individual, following your death.

**How much is the benefit?**

For the Group Income Protection Scheme, the maximum initial benefit is 75% of your salary less a deduction in respect of the State benefit for a single person. This benefit is paid as income and taxed accordingly.

For the Group Life Assurance Scheme, the benefit is four times your annual basic salary.

**Do I have to pay towards the benefit?**

No. Cramer pays the whole cost, which does not count as part of your income for tax purposes.

**What happens if I leave the company?**

Should you leave employment with Cramer Systems your cover in both Schemes automatically ceases on the date that you leave.

**NOTES**

The operation of both Schemes is governed by the terms of the Group policies, and nothing in this summary will override the terms of that document.

24. On the 17<sup>th</sup> October 2007, the Claimant signed a form to confirm that he wished to participate in the benefit schemes referred to in the pack of documents, including the income protection scheme.
  
25. On the 23<sup>rd</sup> November 2007, Cramer Systems Limited wrote to the Claimant to inform him that it was anticipated that Cramer Systems Limited would change its name to Amdocs Systems Limited on the 1<sup>st</sup> December 2007.
  
26. On the 1<sup>st</sup> October 2008, Amdoc Systems Limited wrote to the Claimant in the following terms:

**Alterations to Terms and Conditions of Employment**

Further to recent discussions, I write to confirm the following amendment to your contract of employment with Amdocs Systems Limited

**New Job Title: QE Manager**

**New Job Family: Dev Tech  
New Stream: Quality Assurance  
Effective Date: 1<sup>st</sup> October 2008  
All other Terms and Conditions of your employment contract remain unchanged.**

27. In the autumn of 2008 the Claimant became unwell and in March 2009 he was diagnosed by his General Practitioner with suspected Encephalomyelitis/Chronic Fatigue Syndrome. The diagnosis was confirmed by a specialist at the end of June 2009. According to the document at page 303 in the hearing bundle, the Claimant commenced long term sick leave on the 30<sup>th</sup> June 2009. That sick leave has continued, without interruption, to the present day.
28. On the 28<sup>th</sup> July 2009, Amdoc Systems Limited sent a letter to the Claimant enclosing some claims forms for him to complete in respect of a claim for permanent health insurance. The Claimant duly completed the forms and returned them to Amdoc Systems Limited.
29. On the 5<sup>th</sup> November 2009, Amdoc Systems Limited wrote to the Claimant in the following terms:

**Further to your conversation with your HR Consultant, I write to confirm that in accordance with your Terms and Conditions of Employment dated 25<sup>th</sup> July 2003 a decision has been made to withdraw company sick pay from you effective 1<sup>st</sup> November 2009. This will not effect your entitlement to Statutory Sick Pay (SSP) which can only be paid upon provision of doctor's certificates for the period in question.**

**You have made a claim under the income protection insurance as per our scheme rules. Under this scheme, the maximum benefit is: *75% of your insured earnings less the state long term incapacity benefit*. This claim is subject to approval of the insurer, which is UNUM.**

**Until your claim with Unum has been approved, or if it is not successful, you will receive any SSP to which you are entitled (and have provided sick notes for). If your doctor signs you fit to return to work on a partial basis (less than your contracted 37.5 hours per week), the Company will top your salary up to your standard hourly**

**rate for any hours you do work, subject to your manager's approval prior to your work and receiving timesheets signed by you and your manager. This will be done a month in arrears until you return to work full time. As soon as you return to 37.5 hours per week (100% recovery), then your salary will be processed as we did before your sick leave.**

30. The Claimant's claim under the income protection scheme was successful and he started receiving benefits under the scheme with effect from the 1<sup>st</sup> November 2009.
31. It is at this point in the chronology of material events that the subject matter of the dispute between the parties emerges, though the dispute itself did not surface until many years later.
32. The payments made under the income protection scheme to the Claimant with effect from the 1<sup>st</sup> November 2009 were not increased by 5% every year.
33. On the 8<sup>th</sup> May 2015, Amdoc Systems Limited wrote to the Claimant to notify him that his contract of employment was to be transferred from Amdocs Systems Limited to the Respondent company.
34. Towards the end of 2015, the Claimant received a letter from Standard Life regarding a new pension plan that had been created for him. It was as a result of that letter that the Claimant investigated the payments that he had been receiving under the income protection scheme and he discovered that the payments had not been increased by 5% every year.

35. On the 5<sup>th</sup> October 2016 the Claimant's solicitors sent a letter to the Respondent requesting, inter alia, an explanation as to why the payments made to the Claimant under the income protection scheme had not been increased by 5% every year. There was no formal response to that letter in the hearing bundle but the Respondent's internal correspondence revealed its position to be that the terms of the income protection scheme had changed in October 2008 and that the 5% annual escalation of payments under the scheme had been removed. The Respondent contended that the Claimant was not eligible for the 5% annual escalation of payments under the scheme because his claim for payments under the scheme was made in 2009, which was after the terms of the income protection scheme had been changed.
36. The Claimant submitted a grievance in respect, inter alia, of the non-payment of the 5% annual increase to the payments under the income protection scheme on the 12<sup>th</sup> October 2017 and the Respondent's written response was as follows (dated the 28<sup>th</sup> November 2017):

**... I have reviewed and analysed the issues you have raised in your grievance letter and discussed these with relevant people within the Company as part of my investigation. My conclusions are as follows:**

**Income Protection Scheme**

- 1. Each year, on the anniversary of joining the Company's income protection scheme I am due under contract a 5% increase in scheme payments. The anniversary of me joining the scheme is the 1<sup>st</sup> November each year. The amount owed to date is approximately £51,137.45 before taxation. This amount increases each month as the series of unlawful deductions from my wages continues.**
- 2. I have been treated unequally to other disabled employees who are also members of the Company's income protection scheme, with some colleagues receiving the 5% increases while I have not received mine.**
- 3. The Company's decision not to pay the 5% increases due under the income protection scheme only impact employees who suffer disablement.**

**I understand that in 2008, a review of the benefits provided by Amdocs took place. As part of this review, any entitlement to a 5% annual increase under the income protection scheme was removed. The changes in benefit entitlements (including the changes to the income protection scheme) took effect from 1 October 2008.**

**My understanding is that your long-term sick leave started on 2 July 2009 and a claim made on your behalf by the Company was accepted by the income protection insurer with effect from 1 November 2009. Since then, you have been receiving benefits on the basis of the policy that was in place at the time your absence began, i.e. without the 5% annual escalation.**

**For the reasons set out above, I am satisfied that the benefits you are receiving are correct, as they are those applicable following the benefit changes implemented with effect from 1 October 2008, which was 9 months before your sick leave commenced.**

37. The Claimant subsequently appealed the outcome of his grievance and that appeal was dismissed on the 16<sup>th</sup> February 2018. The reasons for the dismissal of the appeal were as follows (in relation to the grievance concerning the non-payment of the 5% annual escalations):

**... To address your queries regarding the LTD IP insurance, I have confirmation from Tong Rogers, C&B Team Lead, that the cover was retroactively applied in January 2009.**

**I agree with the ... grievance findings as communicated to you. The Cramer harmonization with the Amdocs employee benefits, which you subscribe to, were updated annually in October which is the start of the Company's fiscal year.**

**My findings are that the Company was entitled to change the supporting insurance policy behind the LTD IP scheme in 2008 to remove the 5% escalation as stated in the staff Manual and, as you were not accepted on to the scheme until 2009, the escalation is not applicable to you. I note that you did not raise any suggestion that you were entitled to the escalation until 2016.**

38. The Claimant then commenced the present proceedings on the 9<sup>th</sup> March 2018.

#### The issues in the case

39. The issue in the claim is whether the Respondent has made an unlawful deduction of wages, contrary to section 13 of the Employment Rights Act 1996, by failing to increase the Claimant's

payments under the income protection scheme by 5% every year. Both parties' positions in respect of that issue were set out in written arguments presented to the Tribunal.

40. The Claimant's position, in essence, is that he is entitled to the 5% annual escalations on the basis of the terms of the offer letter dated the 25<sup>th</sup> July 2003, the Summary of Benefits attached to the offer letter and his written contract of employment dated the 25<sup>th</sup> July 2003.

41. The Respondent's position is that the Claimant is not entitled to the 5% annual escalations because that entitlement was lawfully removed before the Claimant made a claim for benefits under the income protection scheme.

42. In support of its position, the Respondent relies on the following:

42.1 clauses 6, 7 and 11 of the Claimant's contract of employment dated the 25<sup>th</sup> July 2003 (as quoted above);

42.2 an Employee Handbook (at pages 104 to 148 in the hearing bundle) dated April 2005 (according to the agreed index for the hearing bundle), which contains the following provisions:

**1.1 Contract of Employment**

**Your Offer Letter and Terms and Conditions of Employment form the basis of your contract with Cramer Systems Group Limited, Cramer Systems Europe Limited or Cramer Systems Limited ("the Company").**

**You will be informed of any changes in your Terms and Conditions of Employment in writing.**

...

**5.3 Income Protection Insurance**

**Subject to satisfying any eligibility criteria imposed by the Company's insurers, the Employee shall be entitled to participate at the Company's expense in an income protection scheme, providing up to 75% of salary less an amount equal to basic rate state invalidity benefit, underwritten by such reputable insurers as the Company**

shall decide from time to time. The Company may from time to time change the benefit provider and vary or amend the extent of the cover or the basis on which it is provided. This benefit will cease on termination of employment.

- 42.3 the terms of a Group Income Protection Insurance Policy issued by Unum at pages 241 to 293 in the hearing bundle, which contains the following provisions:

**GENERAL TERMS**

<b>effective date</b>	<b>1 October 2008</b>
...	
<b>Policyholder</b>	<b>Amdocs Systems Europe Limited</b>
<b>Commencement date</b>	<b>1 June 2003</b>
<b>Policy accounting date</b>	<b>1 October</b>
<b>Policy review date</b>	<b>1 October 2010</b>

**SCHEDULE**

<b>Effective date</b>	<b>1 October 2008</b>
...	
<b>Terminal age</b>	<b>65<sup>th</sup> birthday</b>
...	
<b>Basic benefit</b>	<b>75% of a member's insured earnings then less the notional LtSIB</b>
...	
<b>Escalation rate</b>	<b>no escalation rate has been selected for any benefits</b>

43. The Respondent contends that it was entitled, under the terms of the Claimant's contract of employment, to change, at any time, the income protection insurance policy under which the income protection scheme was provided to the Claimant. The Respondent contends that it changed the policy with effect from the 1<sup>st</sup> October 2008 and, as a result, any employee making a claim for benefits under the income protection scheme after that date would not be entitled to any annual escalation rate.

44. The Respondent accepts that the income protection insurance policy that was in force for the period from the date of commencement of the Claimant's employment to the 30<sup>th</sup> September 2008 specified that benefits payable under the income



protection scheme would be increased by 5% every year after the benefits had been paid continuously for 52 weeks.

### The Tribunal's findings of fact

45. The Tribunal heard oral evidence from the Claimant and from the Respondent's only witness, Andrea Swinn, and also read and considered the contents of the 491-page agreed hearing bundle.
  
46. The Claimant's witness statement dated the 18<sup>th</sup> April 2019 stood at his evidence-in-chief. In answer to a supplemental question by Mr Leach, the Claimant stated that he had not seen the 2008 Unum insurance policy until the Respondent sent it to his solicitors in November 2016.
  
47. In cross-examination, the Claimant stated that he had read the offer letter, the summary of benefits and the written contract of service and he had felt that they had contained all of the details that he needed to be aware of. He believed that each of the three documents was equally important. He stated that he had read the written contract of employment and believed that it was consistent with the offer letter and the summary of benefits. He stated he was not given a copy of the manual referred to in the contract of the employment and that the manual did not mean much to him. He relied on the offer letter and the summary of benefits. He believed that the manual would be consistent with the information set out in the offer letter and the summary of benefits. He stated that he had a company laptop and that Cramer Systems Limited operated two intranet systems to which he would have had access. He stated that he scarcely used the intranet systems. He stated that he did not know whether the manual had been on the intranet. If it was, then he was unaware of it. He stated that the intranet systems were difficult to use and that the logging on procedure was complicated.

48. When asked about the reasons for the long delay in raising any issue about the non-payment of the 5% annual escalations, the Claimant stated that his ill-health had had a debilitating effect upon him and that he had not been able to devote much attention to his financial affairs. It was not until he received the letter from Standard Life in 2015 that he began to look into the payments that he was receiving from the Respondent. He had suspected at an earlier stage that he may not be receiving his full entitlements but he did not do anything about it until 2015.
49. Ms Swinn, for the Respondent, gave oral evidence. Her witness statement (signed on the day of the final hearing) stood as her evidence-in-chief. In answer to a supplemental question from Mr Cohen QC, Ms Swinn stated that prior to 2007 all of the Cramer documents were on the intranet.
50. In cross-examination, Ms Swinn stated that she did not know whether the income protection insurance policies provided by Sun Life Financial of Canada and Unum were provided to the Claimant. Ms Swinn was unable to confirm what documents the Claimant was given during the harmonisation process in 2007. When asked about the document at page 237 in the hearing bundle (entitled "*Income Protection Scheme & Group Life Assurance Scheme*"), Ms Swinn stated that the document was produced in 2007. She stated that it was her belief that the escalation rate was removed and the terminal age under the income protection scheme was raised to 65 in 2007, not in 2008. When it was pointed out to her that the document at page 237 in the hearing bundle specified that the terminal age was 65 and there was an escalation rate of 5%, Ms Swinn conceded that she had made a mistake in her evidence as to when the escalation rate had been removed but then stated that she did not know whether the document at page 237 contained a mistake in respect of the terminal age. She stated that the insurance policies were reviewed every year and that each policy is an annual policy, renewed with different providers every year. She stated that there should be policies for 2006, 2007, 2008, 2009 and 2010. When asked whether it is possible that there was a policy pre-dating 2008 and post-dating 2004, Ms Swinn stated that it is possible because it is an annual policy.

51. Ms Swinn confirmed that Amdocs policies and documents would not have been on the Cramer intranet before 2007. She stated that employees were informed at the presentation in 2007 that Amdocs documents were to be placed on the Cramer intranet and it was from then that employees would know how to find things. She stated that the Cramer Employee Handbook ceased to be effective from the 1<sup>st</sup> October 2007. She stated that the purpose of the slide presentation was to show what benefits employees had and what benefits they would be getting after harmonisation. In respect of the income protection scheme, Ms Swinn stated that she was of the view that it was a discretionary benefit. Ms Swinn also confirmed that insurance policies would not be put on the intranet.
  
52. The Tribunal's findings of fact were as follows. The Tribunal found the chronology of material events to be as set out in paragraphs 5 to 38 above.
  
53. The Tribunal was unable to make any findings of fact in respect of the document referred to as the "Manual" in the Claimant's contract of employment dated the 25<sup>th</sup> July 2003. The written contract of employment pre-dated the 2005 Employee Handbook and so the Manual referred to in the contract of employment must have been a different document. Whether the Manual contained similar provisions to the 2005 Employee Handbook is unknown. In particular, it is unknown whether the Manual contained the "time-to-time" clause set out in paragraph 5.3 of the 2005 Employee Handbook.
  
54. In respect of the 2005 Employee Handbook, the Tribunal found that that must have replaced the earlier Manual, it being illogical to suppose that the earlier Manual continued to co-exist with the 2005 Employee Handbook. There was, however, no evidence to indicate that the Claimant was informed about the existence of the new Employee Handbook in 2005 or that it had replaced the earlier Manual.

55. The Tribunal accepted the Claimant's evidence that he had read the offer letter dated the 25<sup>th</sup> July 2003, the summary of benefits that had been attached to the offer letter and the contract of service dated the 25<sup>th</sup> July 2003. The Tribunal accepted the Claimant's evidence that he had viewed those documents as containing all the relevant information concerning the terms and conditions of his employment with Cramer Systems Limited. The Tribunal accepted the Claimant's evidence that he had not read the Manual referred to in his contract of employment or the 2005 Employee Handbook.
56. The Tribunal found that it was likely that the 2005 Employee Handbook and the earlier Manual referred to in the Claimant's contract of employment had been accessible to Cramer employees, including the Claimant, via Cramer's intranet. The Tribunal accepted, however, that the intranet was not easy to use and that the Claimant had never searched for the Manual or the 2005 Handbook on the intranet. The Tribunal was of the view that there was no basis for criticism of the Claimant for not discovering the 2005 Employee Handbook on the intranet. If, as the Tribunal found, he had not been told about the handbook, then it was unrealistic to expect him to conduct periodic searches of the intranet to see if Cramer Systems Limited had published a new handbook without telling him.
57. The Tribunal accepted the Claimant's evidence that he had not been made aware of the removal of the escalation rate from the income protection scheme before engaging in correspondence with the Respondent about the income protection scheme in 2016. The date on which the Claimant learned that the escalation rate had been removed from the Respondent's income protection scheme was the 1<sup>st</sup> November 2016. On that date, the following email was sent by Radhika Katarya, an Employee Relations Expert employed by the Respondent, to the Claimant's solicitors:

**I checked again and I have been advised that [the Claimant] went on LTD from Nov 2009. Please note that this was after the policy removed the escalation in October 2008. I am afraid due to this [the Claimant] doesn't have escalation in his benefits payout.**

58. The oral evidence from Ms Swinn relating to the Respondent's central assertion that the escalation rate had been removed from its income protection scheme, following a change in the underlying insurance policy, with effect from the 1<sup>st</sup> October 2008 was far from clear. Ms Swinn was not an impressive witness when it came to explaining the history of the income protection scheme. Her evidence that the Respondent reviewed its policies annually and obtained new policies on an annual basis did not seem to be born out by the documents in the hearing bundle. Furthermore, her evidence as to when she believed the escalation rate had been removed was unclear. She appeared to be of the view that the escalation rate had been removed in 2007 though there was no documentary material that showed that that had been the case. Owing to her obvious problems in recalling the history of the income protection scheme provided to employees of Cramer Systems Limited, Amdocs Systems Limited and the Respondent, the Tribunal was unable to place any real reliance on Ms Swinn's evidence on that subject and had to fall back on the documents in the hearing bundle to see what they revealed.
59. One of the central documents relied upon by the Respondent was the Group Income Protection Insurance Policy at pages 241 to 293 of the hearing bundle. Though the policyholder was Amdocs Systems Europe Limited, the definitions clause of the policy made it clear that the policy applied to Amdocs Systems Limited. This new policy came into force on the 1<sup>st</sup> October 2008 and it provided for no escalation rates for any of the benefits payable under the policy. That was a significant change from the previous policy, which the Tribunal found to be the policy at pages 149 to 196 in the hearing bundle. Under that policy, there was a fixed escalation rate of 5% that applied to all benefits payable under the policy.
60. The Tribunal accepted the Claimant's evidence that he had suspected he was not receiving his full entitlement, as he saw it, under the income protection scheme but due to the effects of his illness he took no action about it until late 2015. The Tribunal also accepted his evidence, which was not challenged, that the payments that he had received under the income protection scheme were paid through the Respondent's PAYE system.

## The law

61. There is no dispute between the parties in relation to the application of section 13 of the Employment Rights Act 1996 to the case. If the Claimant's contention be right that he has been entitled to a 5% escalation rate on the payments under the income protection scheme, then the Respondent accepts that the non-payment of the increased rate would represent an unlawful deduction of wages.
62. The Respondent's case, however, is that the Claimant was not entitled to the 5% escalation rate at all or, in the alternative, if there was such an entitlement, the entitlement ceased with effect from the 1<sup>st</sup> November 2016 when the Claimant became aware that the escalation rate had been removed in October 2008.
63. In support of their respective positions on the issue in dispute, counsel for the Claimant and counsel for the Respondent, in their written arguments and in their oral submissions, drew the Tribunal's attention to a number of authorities.
64. The Claimant relied on *McCree v. London Borough of Tower Hamlets* [1992] IRLR 56, *Villella v. MFI Furniture Centres Ltd* [1999] IRLR 468, *Briscoe v. Lubrizol Ltd* [2002] IRLR 607, *Jowitt v. Pioneer Technology (UK) Ltd* [2003] EWCA Civ 411, *Awan v. ICTS UK Ltd* (UKEAT/0087/18/RN and *International Packaging Corporation (UK) Ltd v. Balfour & others* [2003] IRLR 11.
65. The Respondent relied on *Cadoux v. Central Regional Council* [1986] IRLR 131, *Keeley v. Fosroc International Ltd* [2006] IRLR 961, *Parkwood Leisure Ltd v. Alemo-Herron & others* [2011] IRLR 696 and *Wood v. Capita Insurance Services Ltd* [2017] UKSC 24.

66. Helpful summaries of the relevant propositions from the cited cases were set out in the written arguments produced by both counsel and further submissions on the authorities were made during closing speeches.

### The Claimant's submissions

67. The Claimant contends that he has a contractual entitlement to the escalation rate on the payments made to him under the Respondent's income protection scheme on the basis of the proper construction of the offer letter, the summary of benefits and the written contract of service.
68. The Claimant submits that the offer letter clearly stated that Cramer would pay staff on sick leave their full salary (less any statutory sick pay) for the first 13 weeks that they are ill and thereafter an income protection "plan" had been established that will pay employees 75% of their annual salary, less basic rate state long-term incapacity benefit, up to their 60<sup>th</sup> birthday.
69. Mr Leach points out that there is no reference in the offer letter to any underlying insurance policy in relation to the income protection scheme.
70. Turning to the summary of benefits, it is submitted by the Claimant that that document was incorporated into the contract of employment. The Claimant relies on the fact that the summary of benefits describes an entitlement to an escalation rate that is consistent with the offer letter and, going beyond the offer letter, it explains the rationale for the escalation rate in the following terms: "*In this way, your benefits will have a degree of protection from inflation*". It is also made clear in the summary of benefits that the whole cost of the income protection scheme is born by the employer.

71. The Claimant also relies on the fact that the summary of benefits makes clear that the Claimant was included in the income protection scheme from the day he commenced employment with Cramer Systems Limited.
72. In relation to the wording in the summary of benefits to the effect that the operation of the income protection scheme is governed by the terms of "*the Group policies*" and that nothing in the summary of benefits will override the terms of "*that document*", the Claimant contends that it is unclear as to what "*that document*" is but that, in any event, the wording in the summary of benefits did not provide a basis for restricting, or doing away with, the Claimant's contractual entitlement to the specified escalation rate in the event of the Respondent subsequently obtaining a new insurance policy that did not contain provision for an escalation rate.
73. It is accepted by the Claimant that the summary of benefits made reference to an underlying insurance policy provided by Sun Life Financial of Canada but it is contended that the reference to the insurance policy did not have the effect of converting the Claimant's contractual right to the escalation rate into a right to the provision of income protection insurance cover only or to the payment of benefits contingent on the availability of such insurance cover. The Claimant contends that the summary of benefits is analogous to the Booklet in the case of *Awan*.
74. In relation to the written contract of service, the Claimant draws attention to clause 6, which provides that the Claimant is entitled to, inter alia, a "*salary protection plan*" to the extent and in the circumstances set out in the Manual and outlined in the offer letter. The Claimant accepts that the Manual was incorporated into the contract of employment but not with the effect of altering the contractual entitlement to the escalation rate conferred by the offer letter and the summary of benefits. The Claimant contends that the agreement relating to the escalation rate set out in the offer letter and the summary of benefits was external to the Manual and that the effect of clause 22 of the contract of service was to render that



contractual entitlement immune from alteration or variation by any provision set out in the Manual. The Claimant's position is that the offer letter and the summary of benefits constituted the terms of his contract in relation to the income protection scheme and the effect of his contract of service was to prevent the Manual, whatever that had to say about the income protection scheme, from having any contractual effect in relation to the income protection scheme.

75. As to what the Manual had to say about the income protection scheme, the Claimant points out that that is not known. The Manual in force at the commencement of the Claimant's employment has not been disclosed. The Claimant also points out that the April 2005 Employee Handbook contains an apparent misstatement as to the terms of the income protection scheme in that it fails to mention the escalation rate. There is no dispute between the parties that the escalation rate formed part of the income protection scheme until the 1<sup>st</sup> October 2008 when the new insurance policy was taken out by the Respondent. As of April 2005, an escalation rate did form part of the income protection scheme. It follows that the 2005 Employee Handbook's description of the benefits under the income protection scheme was, at best, incomplete.
  
76. The Claimant's position, therefore, is that the offer letter and the summary of benefits conferred the contractual entitlement to the escalation rate: namely, a 5% annual increase on the payments made under the income protection scheme. The Claimant contends that there was no contractual basis, express or implied, for the Respondent to vary the terms of the income protection scheme as set out in the offer letter and the summary. The fact that it subsequently obtained a new insurance policy from which the escalation rate had been removed had no effect, the Claimant contends, on his contractual entitlement to the 5% escalation rate. The insurance policies were never provided to employees and the Claimant contends there is no basis for a finding that any insurance policy, before or after the 1<sup>st</sup> October 2008, relating to the provision of an income protection scheme was ever incorporated into the Claimant's contract of employment.

77. In relation to the Respondent's contention that the notification of the change in insurance policy on the 1<sup>st</sup> November 2016 had the effect of removing the Claimant's entitlement to the 5% escalation rate, the Claimant submits that that notification had no contractual implications for him. It was of no relevance to the Claimant that the Respondent had obtained a new policy without an escalation rate when the Claimant had an existing contractual entitlement to a 5% escalation rate. If the Respondent had failed to obtain an insurance policy capable of underwriting its contractual obligations to the Claimant, then that was a matter for the Respondent and not for the Claimant.

### The Respondent's submissions

78. The Respondent's primary case is that the Claimant was only ever contractually entitled to receive the salary for which the Respondent was indemnified by its income protection insurer. That contention rests, to a large extent, on the application of paragraph 5.3 of the 2005 Employee Handbook to the Claimant's case. The Respondent points out that the Handbook does not provide any express right to the escalation rate and that it contains, in paragraph 5.3, a "time-to-time" clause that permitted the Respondent, from time to time, to change its income protection insurance policy without informing the Claimant of the change. The Claimant's entitlement was to participate in an income protection scheme with whatever insurer and with whatever level and terms of cover as were in place between the Respondent and the insurer, from time to time. What the Claimant might receive under the income protection scheme was precisely coterminous with the extent of the Respondent's insurance cover. Given that there was no escalation rate under the insurance policy in force at the time that the Claimant submitted his claim for income protection, he had no entitlement to an escalation rate.
79. The Respondent also advanced a secondary case based on clause 11 of the contract of service. It was submitted that if there was any requirement to inform the Claimant of any material change to the income protection insurance policy under which income protection

payments were made to him, derived from clause 11, then that requirement was fulfilled on the 1<sup>st</sup> November 2016 when the Claimant was told that the escalator had been removed with effect from the 1<sup>st</sup> October 2008. That communication, on the Respondent's secondary case, reset the terms of the income protection scheme back to the terms under the October 2008 policy with the effect that the Claimant's entitlement to the escalation rate (which right was denied according to the Respondent's primary case) ceased with effect from the 1<sup>st</sup> November 2016. Any claim for the non-payment of the escalation rate on payments up to the 1<sup>st</sup> November 2016 was well out of time, or, if any part of it was in time, then the quantum of the claim would be extremely modest.

80. The Respondent also advanced a third case along the following lines. If the effect of the notification dated the 1<sup>st</sup> November 2016 was to remove further applications of the 5% escalator after the 1<sup>st</sup> November 2016 but did not reset the terms of the income protection scheme back to the 75% salary entitlement (with no escalator) for the period up to the 1<sup>st</sup> November 2016, then a one-off adjustment would be needed to the quantum of the benefits paid to the Claimant after the 1<sup>st</sup> November 2016, to reflect the 5% annual increases up to the 1<sup>st</sup> November 2016. If that third case were to be accepted, then the quantum of the claim would be substantially reduced from that advanced by the Claimant.
  
81. In support of its second and third cases, the Respondent argued that it had a right to amend paragraph 5.3 of the Employee Handbook by virtue of clause 11 of the contract of service. The notification dated the 1<sup>st</sup> November 2016 (that the escalator had been removed with effect from the 1<sup>st</sup> October 2008) was an amendment communicated to the Claimant within the meaning of clause 11 of the contract of service. The consequences are either that the claim is restricted to non-payments of the escalator prior to the 1<sup>st</sup> November 2016, which would largely be out of time, or that the Claimant's entitlement to benefits should be recalculated with effect from the 1<sup>st</sup> November 2016 to take into account the effect of the 5% escalator up to the 1<sup>st</sup> November 2016.

82. The Respondent disputes the Claimant's central contention that the contractual entitlement to the 5% escalation was fixed by the offer letter and the summary of benefits. The Respondent contends that that contention is fundamentally flawed for the following reasons:
- 82.1 Paragraph 5.3 of the Employee Handbook is incorporated into the Claimant's contract of employment by clause 6 of the contract of service. Paragraph 5.3 of the Employee Handbook is not omitted from the Claimant's contract of employment by virtue of clause 22 of the contract of service.
  - 82.2 The contents of the offer letter and the summary of benefits do not have the effect of excluding the plain terms of paragraph 5.3 of the Employee Handbook from the Claimant's contract of employment. The documents must be read together to ascertain the nature of the bargain and when that is done, it shows, that the Respondent had a unilateral entitlement to change the income protection insurance from time to time.
  - 82.3 The Claimant's case defies commercial logic. The Respondent was nothing more than an intermediary for the passing on of insurance monies to an eligible employee. It obtained and paid for insurance so that employees suffering long term sickness absence would receive an income. It is not the case that the Respondent was acting as a self-insurer and was taking on a long term liability for which it had no protection. That would be a commercially improbable interpretation of the situation, making the Claimant's case on the interpretation of the contract to be highly unlikely.
  - 82.4 The summary of benefits is in fact contrary to the Claimant's case in that it makes clear that an employee has no greater entitlement than the income protection schemes provided, from time-to-time, by the insurance policies purchased by the Respondent.

83. The Respondent also disputes that the summary of benefits had any contractual effect. The document was stated to be a “summary”. It was a limited description of something larger and more complex. It was, to quote the offer letter, provided “*for further information*”. Clause 6 of the “contract of service” provided that the income protection scheme was “*outlined in the employee’s letter of offer*”. None of that is the language of incorporation.

### Decision

84. The Tribunal found that the offer letter, the summary of benefits and the contract of service conferred a contractual entitlement upon the Claimant to the escalation rate that he contends he is entitled to.
85. In the judgment of the Tribunal, it was the clear contractual intention of the parties to bestow upon the Claimant, as a permanent employee, the benefit of the income protection scheme described in the offer letter and the summary of benefits, which included the 5% escalation rate provided for in the summary of benefits.
86. It is correct that the summary of benefits made express reference to an insurer, in the context of the income protection scheme provided to permanent employees, but that fell far short, in the judgment of the Tribunal, of being sufficient to show that the Claimant’s contractual entitlement was to the Respondent obtaining cover under an insurance policy for an income protection scheme and passing over to him any benefits payable under it.
87. It is also correct that the summary of benefits stated that “*the operation of both Schemes is governed by the terms of the Group policies, and nothing in this summary will override the terms of that document*”, but that “*document*”, assuming it was an insurance

policy with Sun Life Financial of Canada, was never provided to the Claimant and was never, of itself, of any contractual force as between the Claimant and the Respondent. In any event, it is not disputed that until the 1<sup>st</sup> October 2008, the escalation rate of 5% would have applied to a permanent employee making a claim under the Respondent's income protection scheme. It follows that it is reasonable to suppose that the "*Group policies*" referred to in the summary of benefits provided an escalation rate as specified in the summary of benefits and were not in conflict with the summary of benefits.

88. The Tribunal could not accept the Respondent's submission that the summary of benefits had no contractual force. In the judgment of the Tribunal, the summary of benefits was clear and certain as to the benefits payable under the Respondent's income protection scheme. The fact that it was called a "summary" did not, in the judgment of the Tribunal, prevent the document from having contractual status.
89. In the judgment of the Tribunal, there was nothing in the offer letter, the summary of benefits or the contract of service to alert the Claimant that his entitlement to benefits under the Respondent's income protection scheme may change from time to time. Had that been the intention of the Respondent at that time, then wording could have been used to make that clear in the offer letter or the summary of benefits or the contract of service. No such wording was used.
90. The question is raised as to what did the Manual have to say about the Respondent's income protection scheme. The answer to that is that no-one seems to know. The Tribunal was not prepared to assume that the Manual referred to in the contract of service contained a time-to-time clause as set out in paragraph 5.3 of the later 2005 Employee Handbook. The Tribunal was also not prepared to find an implied time-to-time clause (of the kind set out in paragraph 5.3 of the later Employee Handbook) in the Claimant's contract of employment in the absence of evidence as to the

contents of the Manual. In the judgment of the Tribunal, such an implied term was not necessary under either the officious bystander or the business efficacy tests.

91. In any event, however, given the Tribunal's finding as to the contractual force of the provisions in the summary of benefits regarding the income protection scheme, the effect of clause 22 of the contract of service was such as to remove the contractual effect of anything that the Manual said, if it said anything, about the amount of income protection to which the Claimant was entitled under the Respondent's income protection scheme. In other words, in the judgment of the Tribunal the Manual was subject to the agreement between the parties, as set out in the summary of benefits, that the Claimant was entitled to an increase of 5% every year upon the payments made to him under the income protection scheme, up until the age of 60, after those payments had been made continuously for 52 weeks.
  
92. The Respondent contended that it was entitled to rely upon paragraph 5.3 of the 2005 Employee Handbook in support of its contention that the Claimant's contract of employment contained a time-to-time clause, restricting the Claimant's entitlements under the Respondent's income protection scheme to those that were indemnified by the Respondent's insurers from time-to-time, because of the way in which the Claimant had pleaded his case in paragraph 9 of the Voluntary Further and Better Particulars dated the 25<sup>th</sup> July 2018. The Tribunal, however, was not impressed with that argument. Paragraph 9 of the Voluntary Further and Better Particulars pleaded, incorrectly, that the version of the Manual in force at the date of commencement of payments to the Claimant under the Respondent's income protection scheme was the 2005 Employee Handbook. Though the Claimant may not have been aware of the error at the time when paragraph 9 was pleaded, the Respondent would certainly have known, or ought to have known based on the evidence from Ms Swinn, that the 2005 Employee Handbook ceased to be effective from the 1<sup>st</sup> October 2007, some 2 years before the Claimant made his claim for income protection. As to what Manual or Employee Handbook was in force as of November 2009, the picture, regrettably, was not particularly clear

from the evidence. The hearing bundle contained an Employee Handbook dated January 2012 but there was no Manual or Employee Handbook shown to the Tribunal for the period from the 1<sup>st</sup> October 2007 to the 31<sup>st</sup> December 2011. In any event, the error made by the Claimant in paragraph 9 of the Voluntary Further and Better Particulars did not, in the judgment of the Tribunal, enable the Respondent to argue that it had effectively been conceded by the Claimant that the Manual referred to in the contract of service was in identical terms to the later 2005 Employee Handbook.

93. On the basis of the evidence before it, the Tribunal was unable to find that the Claimant's contract of employment, as set out in the offer letter, the summary of benefits and the contract of service contained a time-to-time clause as later appeared in the 2005 Employee Handbook. The Respondent, therefore, did not succeed in its primary argument that the Respondent was only ever contractually entitled to receive to the salary for which the Respondent was indemnified under the income protection scheme. The finding of the Tribunal was that the Claimant was contractually entitled to receive a 5% increase every year on the benefits paid to him under the Respondent's income protection scheme after such benefits had been paid continuously for 52 weeks.
94. Turning to the Respondent's second and third submissions, both of which turned on the significance of the Claimant being informed on the 1<sup>st</sup> November 2016 that the escalation rate had been withdrawn with effect from the 1<sup>st</sup> October 2008, the Tribunal was not persuaded that the effect of the information given to the Claimant on the 1<sup>st</sup> November 2016 was to reset the terms of the income protection scheme to which he was entitled to 75% of his salary with no escalation rate, either back to the time that he made his claim for income protection or from the 1<sup>st</sup> November 2016. In support of that argument, the Respondent relied upon clause 11 of the contract of service but that clause related to the communication of amendments to the Manual referred to in the contract of service. In the judgment of the Tribunal, the communication dated the 1<sup>st</sup> November 2016 was not the type of communication referred to in clause 11 of the contract of service. The 2005 Employee Handbook that no doubt replaced the Manual referred to in the contract of



service had the potential to be the type of amendment referred to in clause 11 of the contract of service but there was no evidence whatsoever to indicate that the contents of the 2005 Employee Handbook were ever communicated to the Claimant individually or otherwise. Simple placement of the 2005 Employee Handbook on the intranet system, without informing the Claimant of the placement, would not suffice as communication to the Claimant that his rights and liabilities under the Manual had been changed. The Tribunal was reinforced in that view on the basis of the Respondent's correspondence with the Claimant dated the 12<sup>th</sup> September 2005, the 23<sup>rd</sup> May 2006, the 15<sup>th</sup> September 2006 and the 13<sup>th</sup> July 2007. In none of those letters was there any mention by the Respondent to the effect that the Manual in force at the date of the commencement of the Claimant's employment had been replaced by the 2005 Employee Handbook. It was also significant, in the view of the Tribunal, that during Ms Swinn's presentation in 2007, the Claimant was told that his entitlement to income protection would be equal under the Amdocs regime to what it had been under the Cramer regime. There was simply nothing at all to alert the Claimant that he was not, and had never been, contractually entitled to a 5% escalation rate but was only entitled, and had only ever been entitled, to a level of income protection that might fluctuate from time to time if the Respondent chose, without giving notice, to change insurers or change the insurance policy.

95. Having found that the Claimant was contractually entitled to an increase of 5% every year on the payments made to him under the Respondent's income protection scheme, after such payments had been made continuously for 52 weeks, and it being accepted by both parties that the escalation rate of 5% has never been applied in the Claimant's case, the decision of the Tribunal is that the Claimant succeeds in his claim that there has been an unlawful deduction from his wages arising from the Respondent's failure to increase the payments made to him under the income protection scheme by 5% every year after the payments had been made continuously for 52 weeks after the 1<sup>st</sup> November 2009.

96. It is not disputed between the parties that the effect of section 23(4A) of the Employment Rights Act 1996 is to limit the extent of the deductions that the Claimant can recover from the Respondent to a period of 2 years ending with the date of the presentation of his claim: namely, the 9<sup>th</sup> March 2018.
97. The claim shall now be listed on the first available date after the 26<sup>th</sup> August 2019 for a remedies hearing with a time estimate of 1 day.

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**Employment Judge David Harris**

Dated: 11<sup>th</sup> August 2019

Judgment entered in Register  
and copies sent to parties on:

for Secretary of the Tribunals

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The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and written reasons since February 2017 are now available online and are therefore accessible to members of the public at:

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