# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Walker Smith

**Respondent:** Perrys Motor Sales Limited

**HELD AT:** Manchester **ON:** 2 and 3 May 2017

**BEFORE:** Employment Judge Howard

**REPRESENTATION:**

**Claimant:** Mr M Budworth, Counsel
**Respondent:** Mrs A Datta, Counsel

# JUDGMENT

The judgment of the Tribunal is that:-

1. The claimant's claims of unfair dismissal pursuant to the provisions of Section 98 of the Employment Rights Act 1996 and for breach of contract being unpaid notice of termination of employment are well founded.

2. The claimant contributed to his dismissal through his conduct and the basic and any compensatory award is reduced by 50% to reflect that culpable conduct.

3. The respondent failed to provide written particulars of employment and shall pay to the claimant two weeks' pay in accordance with S38 Employment Act 2002.

4. A hearing to determine remedy will be held in accordance with the directions given at paragraph 46 below.

# REASONS

1. In support of the respondent's case the Employment Judge heard evidence from Chris Thexton, Group Financial Controller, John Viluns, Regional Director and Darren Ardron, Managing Director. In support of his claim, the Employment Judge heard from the claimant and from Tony Cowpe, formerly Dealership Financial Manager.

2. At the outset of the hearing the Employment Judge identified and agreed with the parties the issues to be determined as follows:

**Unfair Dismissal**

(i) Whether the respondent could establish a potentially fair reason for dismissal falling within Section 98(1) of the Employment Rights Act 1996; the respondent relied upon conduct. The claimant accepted that reason but asserted that his dismissal was unfair applying Section 98(4) of the Act.

(ii) If the claimant had been unfairly dismissed, whether he had contributed to his dismissal through his conduct to any extent and/or whether the *'Polkey'* principles applied to his dismissal.

(iii) Whether the respondent had unreasonably failed to comply with the requirements of the ACAS Code of Conduct on Disciplinary proceedings, specifically paragraphs 13 (a) to (p); insufficient investigation; if so whether to uplift the claimant's award, to reflect that unreasonable failure, by a percentage.

**Breach of Contract**

(i) The claimant asserts that he was summarily dismissed in breach of his contractual entitlement to twelve weeks notice pay, the respondent asserts that the claimant's conduct amounted to a fundamental breach of contract upon which it relied in bringing his employment to an end.

3. The Employment Judge was referred to an agreed bundle of documents with additional documents inserted at the outset of the hearing as agreed by the parties.

**The findings of fact relevant to the issues**

4. The claimant had been employed for 25 years for the respondent before his dismissal on the 13th June 2016. Initially he was a Service Body Shop Manager, promoted to General Manager in 1993 and by 2013/4 he was responsible of the operation of five dealerships, three operating under Peugeot Franchises and two operating under Nissan and Nissan Citroen Franchises. It was not in dispute that the claimant had an exemplary working record, a clean disciplinary record and 100% attendance and punctuality and that he was well regarded for his ability to achieve high market sales and strong customer satisfaction. Of the respondent's General Managers, the claimant was responsible for the largest number of dealerships and

staff and it was recognised that taking on the Nissan Citroen dealership was particularly challenging for the claimant. In recognition of his performance and responsibilities, the claimant was one of the highest paid General Managers.

5. The claimant was never issued with terms and conditions of employment or a job description; his role and responsibilities had expanded and developed over time but were never reduced to writing.

6. Each region had a dedicated Financial Manager. There was considerable dispute between the parties as to the relative status and reporting structure of the two roles. The respondent relied upon a chart entitled 'Blackburn cluster structure' to demonstrate that the Financial Manager reported directly to the General Manager. The claimant explained that the chart had been drawn up by his secretary and in its original form reflected his management responsibility for Branch and Service Managers through lines connecting them to him and that the Financial Manager was shown as a stand alone 'central hub'. The version provided by the respondent contained colour coded information identifying the Financial Manager as reporting to the General Manager. The claimant insisted that the colour coding had been added following his dismissal. The Employment Judge accepted the claimant's evidence on this point and did not accept the chart as evidence that the Financial Manager reported to the General Manager.

7. The claimant explained that he was responsible for managing his Branch/Sales Managers performance to maximise sales and profit and maintain high customer satisfaction, but that the Financial Manager was responsible for the region's management accounts and reporting functions.

8. The Employment Judge heard evidence from Tony Cowpe, which was unchallenged by the respondent. Mr Cowpe had been the Financial Manager within the Blackburn region for some ten years until he retired in March 2014. Mr Cowpe confirmed that he had read the claimant's witness statement and agreed with his description of the role of the General Manager. He confirmed that the accounting and reporting responsibilities were the Financial Manager's, which involved keeping tight controls over all financial matters including manufacturer debts and bonuses payable. Mr Cowpe would receive daily information from the vehicle manufacturers, such as the amount of any bonuses paid to the dealerships for sale of their vehicles. He recorded information on a spreadsheet, enabling him to keep a track on debts due to the company from the manufacturers. Mr Cowpe's task would be to chase the region's Sales Managers if monies owed had not been received. He confirmed that the claimant would not get involved unless there was a problem with a Sales Manager, in which case he could rely upon the claimant to chase that manager and instruct him to take the action required by Mr Cowpe.

9. As Mr Cowpe explained, debts varied considerably on a monthly basis dependent on the stage in the financial year or vehicle registration period, leading to spikes in vehicle debts which would lead to a spike in the vehicle bonus debt but that was not a matter that the claimant was expected to be involved in. Mr Cowpe would submit the management accounts including the balance sheet to Head Office every month, the Financial Controller would then review the management accounts and periodically, the controller would hold a review with Mr Cowpe. The management

accounts were copied to the claimant but he was not involved in the balance sheet reviews with the Financial Controller nor was he expected to be involved in those reviews. As Mr Cowpe explained, this was because the detail of the financial control of the dealerships in the region was his responsibility, monitored and reviewed between him and the Financial Controller at Head Office. If any issues were to arise with the accounts, Head Office would direct how they expected the matter to be resolved. External audits were carried out by independent auditors reporting to Head Office and the claimant had very little involvement in them.

10. It was accepted by both the claimant and the respondent and validated by annual external audits, that Mr Cowpe had been highly competent in his role as Financial Manager. The Employment Judge accepted his uncontested evidence, consistent with the Claimant's description, as an accurate account of the Financial Manager's role and its interaction with the role of General Manager. In particular the Employment Judge accepted that the claimant did not have line management responsibility for the Financial Manager, that the Financial Manager was not accountable to or under the direction of the General Manager but rather to the Financial Controller in Head Office. This conclusion was further supported by a recent advert for a Financial Manager following the dismissal of Mr Cowpe's successor, Carl Midgley, which states; *"reporting to the Group Financial Controller, in this role you will have financial reporting responsibilities for a number of local sites which will include the following tasks, preparation and reporting of the monthly management accounts, preparation and entry of monthly manufacturer composite reports, weekly forecasting, tight control of dead files and manufacture bonuses …."*. The Employment Judge did not find the respondent's explanation for the content of the advert; that the reporting line had been changed to improve financial management in the region, to be convincing.

11. In June 2015, Mr Thexton joined the respondent as Group Financial Controller. He quickly identified that vehicle debt had reached unacceptable levels across the whole business and set about taking active steps to reduce the debt. Through regular meetings, appraisals and email communications with the Financial Managers, he gave them instructions on how to manage the debt down across the regions. As evidenced by email correspondence contained within the bundle and accepted by the respondent, Mr Thexton took active steps to scrutinise and direct the Financial Managers' activities more closely with the aim of improving performance, maximising profit and reducing debts across the whole company. Mr Thexton, however, insisted in evidence that line management of Financial Managers and responsibility for their performance, lay with the General Managers. The Employment Judge did not accept Mr Thexton's assertion as accurate or consistent with the reality of the working relationships as described by the claimant, Mr Cowpe and Mr Thexton himself.

12. Mr Cowpe was succeeded by Carl Midgley as Financial Manager. Mr Thexton accepted that during 2015 and early 2016, Mr Midgley had contacted him on several occasions to complain that, particularly since the region had expanded to take on the Nissan Citroen dealership, his workload had become excessive and asking for additional resources. Mr Thexton had refused his request, considering that Mr Midgeley should be able to cope. It was apparent that Mr Thexton had not

appreciated the real difficulties that Mr Midgeley was encountering in managing all aspects of his role as Financial Manager.

13. From July 2015 onwards, Mr Thexton sent a number of emails to Financial Managers and General Managers about vehicle debts, asking them to review the situation and to take necessary action. On 24th July 2015 he circulated a list of debts asking, *"can each FM and GM review with their Sales Manager and advise what action is being taken to recover the debt in the comments section at the end and return, if a balance needs to be written off please resolve this, if not can you collect the payment and clear".* On 31st December 2015 Mr Thexton wrote again stating *"as already noted working capital is one of the key points of focus for 2016 - vehicle debt is going to be a key part of this, it's the responsibility of each FM and GM/Branch Manager to be in control of this for their business".*

14. The claimant's position was that although he had seen the emails, his assumption was that Mr Midgley would be dealing with these matters as it was his area of responsibility and that, if his assistance was required, Mr Midgley would let him know. As it transpired, Mr Midgley had been struggling to fulfil his responsibilities, for which he was ultimately dismissed. The grounds for Mr Midgley's dismissal were laid out in a letter of 13th June 2016 as; *"you have not adequately or appropriately managed the financial resources of the business; between December 2015 and January 2016 you deliberately misallocated credits to bonus debtors in order to tidy up outstanding aged bonus debts resulting in a significant potential loss to the company; that once you became aware of the potential clawback in March or April 2016 you didn't take appropriate action to inform senior managers of the potential financial loss - you did not inform senior managers until the meeting which took place on Thursday 26th May 2016; that following a mistake in accounting elements of the Nissan bonus money which occurred in March or April 2016 you didn't raise this with senior management; that you intended to use Nissan bonus from 2016 to offset 2015 losses meaning that your 2016 trading result was deliberately distorted ultimately adversely affecting profitability. You explained that the situation with the aged bonus debts arose because of the additional workload you faced following the acquisition of Nelson Citroen in October 2015 however it is clear from the spreadsheet you emailed out to managers on 6th December 2015 that there was an issue with aged debt well before the Citroen acquisition, your own spreadsheet shows outstanding debts at June 2016 of approximately £70,000, whilst I can accept that the acquisition of Nelson Citroen compounded the issue I don't accept that it was the cause as it is clear there was a significant issue well before that acquisition … ensuring the accurate reconciliation of credits against debits is a fundamental and basic part of your responsibilities as Financial Manager and your deliberate actions to mis-allocate credits amounts to gross negligence"*.

15. It was clear from the terms of that letter and Mr Midgley confirmed at the investigatory meeting that he had not made the claimant aware of the extent of the accounting difficulties that he was in.

16. On 6th December 2015, Mr Midgley emailed the Branch Managers, copying the claimant and attaching a spreadsheet containing the list of outstanding bonuses and asking managers to clarify what had been or was likely to be paid and what should be written off, stating, *"I do have some reserve for write offs from*

*overpayments accrued which I can use but you will see that the totals outstanding are quite substantial so need looking at thoroughly, this will need doing before the end of the year as these accounts will have to be cleared for any potential order so if you could, make sure you set aside some time to look and claim any that haven't been paid".* The outstanding debts were in the region of £70,000. In evidence and during the disciplinary process the claimant explained that he had received this email but had not opened the attachment and so had not appreciated the substantial amount of outstanding debt. He explained that he had read the email on to his telephone on a Sunday and had not noticed the attachment. Mr Viluns, who conducted the disciplinary hearing did not dispute this explanation but considered it inadequate.

17. By January 2016 Mr Midgley was still pressing the Branch Managers. In an email of 15th January he stated, *"going forward I will be monitoring these and any continuous debts will have to be dealt with by way of disciplinary".* As Mr Midgley confirmed in the notes of his investigatory meeting, and was consistent with the claimant's recollection, they had spoken about the matter and it was at the claimant's suggestion that he had threatened disciplinary action. Mr Midgley confirmed that the claimant had phoned line managers and shouted at them to do what he was telling them to do and he confirmed that the claimant had not asked him to cover anything up and/or not to report it to the Financial Controller.

18. Mr Midgley sent a further chasing email about outstanding bonuses the following day stating *"I will move the balance to the Sundry Creditors Account but I will need answers for any potential audit, I don't want to be in a position where I don't have an answer and this money is taken and we are left with a huge amount to write off in 2016 without a reserve to cover it".*

19. The Employment Judge accepted the claimant's evidence that, whilst he knew that Mr Midgley was chasing the branch and sales managers to recover debts, he was not aware that Mr Midgley had started to use any monies coming in to pay off debts randomly. As Mr Midgley confirmed at his investigation meeting, he had not told the claimant and the claimant had not instructed him to do it.

20. On 26th May 2016, Mr Thexton and Mr Viluns met with Mr Midgley to do an accounts review. The claimant had arranged to meet with Mr Thexton to discuss other matters. It quickly became apparent that there were serious irregularities with the accounts and both Mr Midgley and the claimant were suspended pending an investigation. The claimant's suspension was confirmed by letter that day stating; *"you are suspended from work pending further investigation by the company into alleged gross misconduct relating to serious accounting irregularities within the Blackburn cluster".* Following an investigatory hearing the claimant was invited to a disciplinary hearing by letters of 4th June 2016 to be held on 8th June 2016 to answer six specific allegations as follows:-

> *(i) you did not take sufficient or adequate action to resolve the issue of aged bonus debts highlighted by your Financial Manager Carl Midgley during the period December 2015 to January 2016. This has resulted in a financial loss to the dealership which once reconciled is likely to be a substantial sum;*

*(ii) that you failed to ensure the appropriate achievement of Peugeot training standards which in effect resulted in an overstatement of profit in 2015, you stated you were told by Neil Muscrop at Peugeot that you would not be subject to the clawback yet you did not obtain written confirmation, all the indications at the time were that the required standards had not been achieved;*

*(iii) the dealership is now subject to a clawback of £60,000 in relation to the non-achievement of standards;*

*(iv) that once you became aware of the potential clawback in March or April 2016 you did not take appropriate action to inform senior managers of the potential financial loss, you did not inform senior managers until the meeting which took place on Thursday 26th May 2016;*

*(v) that following a mistake in accounting elements of the Nissan bonus money which occurred in March or April 2016 you did not raise this with senior management, you have stated that you intended to talk to John Viluns about this at the meeting on Thursday 26th May;*

*(vi) that you intended to use Nissan bonus from 2016 to offset 2015 losses meaning that your 2016 trading result was deliberately distorted ultimately adversely profitability;*

*As General Manager you are in a position of authority and trust within the dealership and these allegations if upheld are likely to cause a loss of trust and confidence in your ability to carry out your role to the required standards and are likely to be considered as acts of gross misconduct".*

21. On the 4th June, following notification of the disciplinary hearing, the claimant tendered his resignation on three months notice. The respondent refused to accept the claimant's resignation and proceeded with the disciplinary hearing and the claimant withdrew his resignation on the 16th June explaining that it was not a valid resignation given *"it was sent in the heat of the moment at an acute time of stress and anxiety".*

22. The disciplinary hearing was held by Mr Viluns and the claimant had an opportunity to answer all the allegations against him. Mr Viluns and Mr Ardron confirmed that they had not read or referred to the respondent's disciplinary procedures when holding their respective disciplinary and appeal meetings with the claimant.

23. In respect of (i) the aged debts; as Mr Viluns and Mr Ardron (who heard the claimant's appeal against his dismissal) both explained their belief that the claimant had not had adequate supervision or oversight of Mr Midgley's activities. Both had seen and read the investigatory notes in respect of Mr Midgley and Mr Ardron was aware of Mr Viluns' decision to dismiss Mr Midgley and reasons. Both accepted that there was no suggestion of dishonesty or deliberate misconduct on the part of the claimant, it was simply that his failure to exercise sufficient control over Mr Midgley had amounted to negligence and a loss of confidence in his abilities. Both felt that

the claimant should have kept *'better tabs'* on Mr Midgeley and been *'closer to the business'*.

24. In respect of the Peugeot training issue (ii), (iii) and (iv), it was not in dispute that Peugeot produces online training in its products for sales staff. By way of incentive, Peugeot pay bonuses against training targets. As the claimant had explained during the investigation, disciplinary hearing and at his appeal, a problem had arisen with the Peugeot training website and consequently Peugeot had made the decision to pay training bonus to its dealerships 'up front' with the intention of clawing back a proportion of the bonus if the dealerships did not achieve the online training target set. The claimant had also explained that he had been at a meeting with the Managing Director of Peugeot UK, Neil Moscrop. The claimant had raised the issue of the website and Mr Moscrop had assured him that the online difficulties were appreciated and the claw back would not be applied given his was a high performing region. The claimant had named various attendees at that meeting who had witnessed the conversation.

25. The claimant explained that at the half year point in January 2016, when any claw back would have been due, Peugeot took no action and as this was consistent with the oral assurance he had been given, he gave no further thought to the issue. It wasn't until May 2016, whilst he was on holiday, that he learnt that Peugeot had decided to clawback £60,000. The claimant arranged a meeting to discuss the issue with Peugeot for mid-June. As Mr Viluns subsequently accepted, once he became aware of the issue, the clamant took steps to deal with it by arranging the meeting with Peugeot and arranging to meet with Mr Viluns to discuss the matter with him, at the earliest opportunity on 26th May. Accordingly the respondent accepted before the Employment Judge that allegation (iv) was unfounded, as reflected in the claimant's letter of dismissal where Mr Viluns stated *"I do now accept that you did not become aware of the debit note from Peugeot until your return from holiday on Wednesday 25th 2016 …".*

26. With regard to allegations (ii) and (iii), the witnesses to the claimant's alleged conversation with Mr Moscrop were not approached at any point. However, following the disciplinary hearing, Mr Vilums spoke to the Manager of Training at Peugeot. He had not been present but insisted that no such assurance would have been given by Mr Moscrop. Following the appeal hearing, Mr Ardron contacted Mr Moscrop, himself, who denied that he had given that assurance. For the purposes of any findings of contributory fault and in respect of the breach of contract claim, the Employment Judge considered whether the claimant had, in fact, been given any such assurance and having heard the claimant's evidence and the evidence gathered by the respondent, found that Mr Moscrop said something to the claimant which led him to believe that no claw back would be imposed. Had the claimant not genuinely believed this to be the case, it is unlikely that he would have invited the respondent to contact the named individuals for corroboration.

27. As the respondent conceded, Mr Viluns met with Peugeot and came to an arrangement such that the claw back has not been put into effect.

28. In respect of allegations (v) and (vi) relating to the Nissan bonus offset and double accounting, as Mr Ardron accepted, there was no evidence to support the

allegation that the claimant had intended to use a Nissan bonus to offset 2015 losses. As he also accepted, the claimant only became aware of the accounting mistake in May 2016 and he promptly raised the matter with Mr Viluns at the meeting on 26th May.

29. By letter of 13th June 2016, the claimant was dismissed on the grounds that *"you failed to exercise appropriate control in the financial management of the sites under your control, as General Manager you are responsible for the management of all operational aspects of the site including the proper financial management and safeguarding of the companies assets, it is therefore my decision that you have acted negligently in failing to properly perform your duties and as such I no longer have trust and confidence in your ability to carry out your role to the required standard, for this reason my decision is that your actions amount to gross misconduct and you are therefore summarily dismissed".*

30. In evidence Mr Viluns explained that in reaching the decision to dismiss he had found that the claimant had committed all the acts of misconduct alleged and he relied upon all of these acts cumulatively as amounting to gross misconduct.

31. Mr Ardron heard the claimant's appeal on 22nd June 2016. He upheld the decision to dismiss and notified the claimant by letter, accordingly.

**The Law**

32. The Employment Judge was guided by the EAT judgment in *British Homes Stores v Burchell* 1978 IRLR 379 EAT, being mindful that the employer must show that he had a genuine belief in the employee's guilt, held on reasonable grounds, after reasonable investigation. The Employment Judge was also guided by the Court of Appeal in *Sainsbury's Supermarket Ltd v Hitt* 2003 IRLR 23 CA that the reasonable range of responses test applies to the whole disciplinary process and not just the decision to dismiss.

33. In accordance with the Employment Appeal Tribunal's guidance in *Iceland Frozen Foods Ltd v Jones* 1982 IRLR 439, the Employment Judge was mindful, in reaching her conclusions, not to substitute her own view of what the appropriate sanction should have been for that of the respondent's, but that she should consider whether the decision to dismiss fell within the range of reasonable responses open to a reasonable employer in the particular circumstances of the case.

34. Under s122(2) of the Employment Rights Act 1996 a reduction can be made to the basic award where the Tribunal considers that any conduct of the claimant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent. Under s123(6) of the Employment Rights Act 1996, where the employee is found to have caused or contributed to the dismissal a reduction can be made to the compensatory award. It is only conduct that the employer knew about that can be taken into account and it must actually contribute to the decision to dismiss.

35. Applying *Nelson v BBC (No. 2)* 1997 IRLR 346, three factors must be satisfied if a tribunal is to find contributory fault: the relevant action must be culpable or

blameworthy (including conduct which was perverse or foolish, bloody-minded or merely unreasonable in all the circumstances). This is a question of fact for the tribunal. An employee will not be penalised for conduct which they had no control over; it must have caused or contributed to the dismissal; it must be just and equitable to reduce the award by the proportion specified.

**The Tribunal's Conclusions**

36. The respondent had established a potentially fair reason for dismissal being conduct.

37. The Employment Judge found that the decision to dismiss the claimant for the conduct alleged fell outside the range of reasonable responses open to a reasonable employer in the circumstances. The claimant did not have line management responsibility for Mr Midgley and his financial accounting duties, which were overseen by the Financial Controller. Mr Viluns and Mr Ardron knew that the claimant had not been aware of Mr Midgley's activities but dismissed the claimant and upheld the decision to dismiss because, as they explained, the claimant ought to have known. Such a conclusion did not fall within the reasonable range of responses open to a reasonable employer in these circumstances

38. With regard to the Peugeot claw back issue; whilst no steps were taken to speak to the witnesses named by the claimant, contact was made with Peugeot and eventually Mr Moscrop himself. The Employment Judge considered that whilst further steps could have been taken, the investigation of whether such an assurance had been given fell with the reasonable range and Mr Viluns formed a genuine and reasonable belief that the claimant had not obtained the appropriate written assurance to protect the business from a potential claw back liability. However, the conclusion that the claimant had not reported the matter when he became aware was unsustainable, as Mr Viluns accepted, and no claw back has, in fact, been applied. Mr Viluns was aware that the claimant had a meeting scheduled with Peugeot in the near future which would have presented an opportunity to clarify the matter but he proceeded to dismiss the claimant before that meeting could take place. The claimant's failure to obtain written assurances from Peugeot formed a part of Mr Viluns' rationale for dismissing the claimant but was not relied upon, in and of itself, as warranting dismissal for gross misconduct. In any event, even had it been, the Employment Judge was satisfied that relying on this issue alone as sufficient grounds to dismiss fell outside the range of reasonable responses open to the respondent in the circumstances given the proximity of the meeting with Peugeot about the issue, the lack of any prior warnings issued to the claimant about his performance or conduct, the claimant's long service of 25 years with the respondent and his clean disciplinary and exemplary work record.

39. In respect of the Nissan 'double accounting' allegation, even at the appeal stage, it was still unclear to Mr Ardron and Mr Thexton, where and how the accounting error had occurred and there was no suggestion that it was at the instruction or instigation of the claimant or that indeed he had been aware of it. Likewise, as Mr Ardron accepted, there was no evidence to suggest that the claimant had intended or actioned a misallocation of funds to balance aged debts in the amount of £140,000. In those circumstances to hold the claimant responsible for the

accounting error and the actions of Mr Midgley fell outside the range of reasonable responses to the situation open to a reasonable employer in the circumstances.

40. Accordingly, applying S89(4) of the Employment Rights Act 1996, the respondent acted unreasonably in treating the allegations found as sufficient reason for dismissing the claimant and his dismissal was unfair.

41. The claimant's conduct in not obtaining written assurance from Peugeot was culpable and blameworthy and exposed the respondent to financial risk. This was one of the matters that Mr Viluns relied upon in reaching his decision to dismiss. In the circumstances the Employment Judge considered it just and equitable to reduce the claimant's basic and compensatory award by 50% to reflect that contributory fault.

42. The Employment Judge did not accept the respondent's contention that the *'Polkey'* principles applied. The Employment Judge was not satisfied that it could be said with any degree of certainty that the claimant would have been dismissed for the misconduct alleged, in any event, or within a specified further period. The fact that the claimant tendered his resignation will not serve to limit any compensatory award as the Employment Judge accepted his explanation that it was done in the heat of the moment and withdrawn subsequently.

43. The respondent had not unreasonably failed to comply with the requirements of the ACAS Code as asserted by the claimant. If any breach had occurred, the respondent's failure was not unreasonable and so no uplift is awarded.

44. The claimant's claim being successful and it having become evident that the respondent was in breach of its duty to provide written particulars of employment; the Employment Judge awards compensation to the claimant in the minimum amount of two weeks pay in accordance with S38 Employment Act 2002.

45. The claimant's conduct did not amount to a fundamental and repudiatory breach of the implied term of trust and confidence, entitling the respondent to summarily terminate his employment contract. The claimant's claim of breach of contract being 12 weeks' unpaid notice of termination of employment is well founded.

**Remedy**

46. The matter shall be listed for a remedy hearing and the following directions apply:

46.1 By 29th May 2017 the parties shall send to the Tribunal dates of availability for a one day remedy hearing.

46.2 By 5th June 2017, the claimant shall send to the respondent an updated schedule of loss together with supporting documentary evidence and the claimant's witness statement

46.3 By 19th June 2017, the respondent shall send to the claimant any counter-schedule, documentary and/or witness evidence upon which it will rely at the remedy hearing.

46.4 The claimant shall incorporate both parties' documents into a bundle for the hearing.

Employment Judge Howard

Date 22nd May 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

5 June 2017

FOR THE TRIBUNAL OFFICE