EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102090/2020 (V)

Held via Cloud Video Platform ("CVP") on 23 and 24 November 2020

Employment Judge N M Hosie

Mr J O'Mara	**Claimant**
Concept Office Furniture Ltd	**Respondent**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is that: -

(1) the complaint under s.23 of the Employment Rights Act is well-founded, in respect of the commission payments due to the claimant, and the respondent shall pay to the claimant the sum of **£6,013.75 (Six Thousand and Thirteen Pounds and Seventy Five Pence),** subject to the appropriate deductions for income tax and national insurance, as unlawful deductions from wages;

(2) the respondent is in breach of contract in respect of its failure to give the claimant a 25% shareholding in the respondent Company; and

(3) the case is continued to a hearing to assess the appropriate award of damages for that breach of contract, in the event that the parties are unable to reach agreement on an appropriate award.

REASONS

Introduction

1. The claimant, John O'Mara, brought complaints of unlawful deduction from wages and breach of contract. The claim was denied in its entirety by the

respondent. The two elements of the claim were alleged commission payments and the value of an alleged 25% shareholding in the respondent Company. As the respondent had only recently produced additional information in relation to the shareholding and the claimant's solicitor had not had an opportunity of considering this and taking instructions, it was agreed that I would determine the issue of liability in relation to both elements of the claim but if I found that the respondent was liable, I would only quantify the commission due to the claimant. So far as the value of the shareholding was concerned, if I were to find that the respondent was liable, the parties would endeavour to reach agreement extrajudicially and failing which a further hearing would be fixed to quantify that element of the claim.

The evidence

2. I heard evidence first from the claimant. I then heard evidence on behalf of the respondent from: -

- Rachel Houghton, Managing Director
- Kathryn Bowers, Finance Director

3. The witnesses spoke to written statements.

4. A joint bundle of documentary productions was also submitted ("P").

The facts

5. Having heard the evidence and considered the documentary productions, I was able to make the following material findings in fact. The claimant's background is in supplying office furniture and interiors. Before he started working for the respondent, Concept Office Furniture Ltd ("Concept"), he owned and operated a Company called Concept Office Furniture and Interiors Ltd which ceased trading in 2017.

6. Simon Darvall and John Kane were involved in a group of businesses that carried out office moves, including Business Moves (Glasgow) Ltd and the parent Company, Business Moves Group Ltd . The claimant approached them looking for employment and it was agreed there was potential for overlap –

clients who were moving premises and who were also looking for office furniture, and vice versa.

7. It was decided that the claimant could not be employed by Business Moves as his work was not part of their core business and there was a potential conflict of interest. Accordingly, a standalone Company, Concept, was set up on 22 November 2017 (P407). Concept was owned by Simon Darvall and John Kane (P410).

8. At first, the claimant was engaged as a self-employed Consultant, from December 2017 when Concept began trading.

9. The claimant became an employee of Concept on 1 November 2018. From 2017 onwards, he had been involved in discussions negotiating the terms and conditions of this new employed positions. These negotiations were with the Directors and owners of Concept at that time, namely Simon Darvall and John Kane.

10. I wish to record at this stage, as there were issues of credibility in the case, that the claimant gave his evidence in a measured, consistent and thoroughly convincing manner. It was significant that his evidence was consistent with the documentary productions and email exchanges he had at the relevant time. I was satisfied that he was both credible and reliable. Neither Simon Darvall or John Kane gave evidence at the Tribunal hearing. This was very surprising as it was clear that these discussions and what was or wasn't agreed were likely to be material to the issues in the case. John Kane left the Business Moves business in December 2018. However, Simon Darvall is still involved with the Company and no reason was advanced as to why he did not give evidence.

Ownership of Concept and Business Moves (Glasgow) Ltd

11. In 2017 and 2018, the 1,000 ordinary shares in Concept were owned by Business Moves (Glasgow) Ltd (P412). The Directors of Business Moves (Glasgow) Ltd in 2017 and 2018 were Simon Darvall and John Kane. There were 100 ordinary shares in Business Moves (Glasgow) Ltd. John Kane

owned 25% and Business Moves Group Ltd owned 75% (P401). Business Moves Group Ltd was owned by Simon Darvall.

12. John Kane left the Business Moves business in December 2018, not long after the claimant became an employee of Concept. He was no longer a shareholder of Business Moves (Glasgow) Ltd from December 2018, leaving Simon Darvall (via Business Moves Group Ltd) as a sole owner of the 75 ordinary shares (P404). As I understand it, the Company bought back the 25 shares which had been owned by John Kane, reducing the number of ordinary shares in Business Moves (Glasgow) Ltd from 100 to 75.

Equity shareholding

13. After the claimant became an employee and branch manager of Concept, there were discussions about him having a shareholding in Concept.

14. These discussions, between the claimant, Simon Darvall and John Kane about the terms and conditions of his employment came to a head in October 2018.

15. On 16 October 2018, at 23:16, the claimant sent an email to Mr Kane, following discussions which they had the previous day (P59). He said this:-

"

- *When the agreement was made for me to work with BMG I was promised 25% of the shares of the business. At no time was there a discussion of a non-compete clause or limitation put on how the shares could be held. This was based on meeting or exceeding a £200k sales target, I fail to be only given this information now seems underhanded.*
- *It was BMG who insisted that I go down the self-employed route as it was cheaper and more convenient in case things didn't work out. You are now telling me that if I want to accept the shares which were offered, self-employment is no longer an option and I would need to become a PAYE employee, can you confirm the package and offer if this was to be the preferred option?*
- *Your recommendation is that I remain self-employed, by doing this I won't receive the agreed shares and ultimately will have no reward or bonus for the work carried out in 2017-2018 which I think you will agree is unfair.*

- *I set out my expectations quite clearly with yourself and Simon that the package agreed was a starting point and I was expecting a not insubstantial increase after year one, in fact the package tabled doesn't reflect the hours and effort already put into getting Concept up and running.*
- *When we initially met last year, trust and honesty were mentioned by yourselves on numerous occasions, the way the goalposts have been shifted has in fact eroded what trust I had built up in both yourself & BMG.*
- *If you can provide details of the PAYE offer I will review this and weigh up my options going forward."*

16. Mr Kane replied by email on 17 October 2018 at 03:57 (P59):

"The same offer applies on a PAYE full time basis.

Salary £50k Commission 2.5% Bonus 7.5%

We established that you cannot be self employed and a Director of a company.

It is entirely your choice which path you want to go down."

17. There was a conflict in the evidence which I heard about whether or not agreement had been reached in respect of the claimant's equity shareholding in Concept. The respondent's Managing Director, Rachel Houghton, maintained that: *"the terms were never finalised and the details of John's equity in Concept were never resolved. At no point during John's tenure did he raise this subject with me or ask for clarity on what the final agreement for shares would look like."*

18. However, the claimant maintained that agreement had been reached that he would receive a 25% equity shareholding. I arrived at the view that the claimant's evidence was to be preferred. The evidence, from a variety of sources, supported his position. As I recorded above, the claimant presented as both credible and reliable and I did not have the benefit of hearing conflicting evidence from John Kane, in particular, or Simon Darvall. The claimant was aware that John Kane owned 25% of Concept (via Business

Moves (Glasgow) Ltd) and the aim was that both the claimant and Mr Kane would own 25% of Concept leaving Simon Darvall with 50%.

19. The claimant's position throughout was consistent from the time he sent the email on 16 October 2018 to Mr Kane in which he made reference to the *"promised 25% of the shares of the business"* and Mr Kane does not dispute this in his reply on 17 October (P59).

20. Further, on 18 October 2018, Mr Kane sent an "Offer of employment" to the claimant on behalf of Concept (P61–64) in which he made specific reference to "Equity" (P62):

"Equity: Equality (sic) *Shareholding of 25%"*

21. It was clear to me, in all the circumstances, and on the basis of the evidence which I heard, that the use of the word "Equality" was a typing error. The word should have been "Equity".

22. It was not disputed that offer was accepted by the claimant and that thereafter he became an employee on the terms and conditions stated therein. However, the claimant did not receive any shares and I accepted his evidence that subsequently when he raised the matter with Simon Darvall, he confirmed that he was entitled to the 25% shareholding, "*but kept trying to renegotiate the agreement".* I also accepted the claimant's evidence, that when he met Simon Darvall at Glasgow Airport in March 2019, he confirmed that the transfer of equity would be processed and that he said, *"I am an honourable man"* and *"I am a man of my word"*. Witness statements were exchanged prior to the hearing. It was clear, therefore, that this was an issue between the parties and yet Mr Darvall did not give evidence which meant that the claimant's evidence about these discussions was undisputed.

23. There was further evidence which was consistent with an agreement having been reached between the parties that the claimant would be given a 25% equity shareholding in Concept. In his email on 16 July 2019, at 11:35, to Mr Darvall, the claimant raised the issue of his "equity" (P101). In his response,

the same day at 12:02, Mr Darvall asks if the claimant would "consider a profit share **instead**" (my emphasis) (P101).

24. Thereafter, the claimant found it difficult to "pin down" Mr Darvall (P109 –114). However, on 5 August 2019, at 15:42 (P109), he sent Mr Darvall a copy of the "Offer of employment", dated 18 October 2018, which he had received Mr Kane (P61– 64). The same day, at 15:45, a few minutes after he had received the claimant's email with the "Offer of employment", Mr Darvall sent an email to Rachel Houghton, Concept's Managing Director, (P109) in which he said: *"I think that the above confirms you will have to go along with 25% Equity for John…."*

25. In his email on 9 August 2019 at 07:05 (P123), Mr Darvall suggested to the claimant an investment of £25,000 and states that: *"this is in line with your 25% shareholding in Concept and your very sensible and workable proposal."*

26. Further, in his email on 23 August 2019 at 10:50, Mr Darvall suggested to the claimant a 50-50 shareholding (P144). However, when the claimant made reference to: *"the outstanding issue of the equity",* in his email to Mr Darvall on 2 September 2019 at 09:20 (P143), Mr Darvall replied at 09:49 (P143) as follows: *"There is no need to reach a resolution on the outstanding issue of equity. It is agreed 25% in Concept is all yours……"*

27. Finally, on 23 September 2019 at 10:20, Rachel Houghton sent an email to the claimant to advise that she and Mr Darvall had decided to cease trading in Concept and *"make all employee roles redundant"* (P155). In that email, she also said, with reference to the claimant's shareholding, that: *"I feel that the best way for us to proceed would be to come to an agreement on what the value of the shares would have had in the last year's trading and put together a package which will effectively replace those lost funds."*

28. For all these reasons, I had little difficulty in arriving at the view that agreement had been reached between the parties that the claimant would receive a 25% shareholding in Concept. The evidence in this regard was overwhelming.

Commission

29. The "Offer of employment" which was sent to the claimant by John Kane on 18 October 2018 contains the following provisions (P62): *"Sales Commission: 2.5%"*

30. Business Moves Ltd has a "Commission Agreement" (P54 – 58). It was alleged by the respondent that this, *"applies across the Group and to Concept. It is given to all sales people and directors and anyone with the ability to earn commission".* However, there was no record of the Agreement being sent to the claimant or of him having signed it.

31. When it came to considering what this contractual provision in the "Offer of employment" meant, once again the respondent was labouring under the difficulty that John Kane, who had negotiated the contract with the claimant, did not give evidence. Although Rachel Houghton maintained that the claimant must have been aware of the Agreement, she was not involved in these discussions.

32. I arrived at the view, again without a great deal of difficulty, that there was no agreement that the claimant's entitlement to commission would be subject to the terms of the Business Moves "Commission Agreement". There were a number of reasons for this. Concept was "a separate standalone Company" and was distinct, as it was the only part of the "Business Moves business" that supplied office furniture. The claimant negotiated his own terms and conditions. In his email on 19 October 2018, at 16:35, he said this (P66 -67):

"I have a question about the commission rate laid out in the offer, which sales does this apply to? John has told me previously the commission applied to all sales but during our last conversation this changed to applying to sales I had secured but not to anything referred by BMG, can you clarify this?"

33. I accepted the claimant's evidence, which was consistent with the relevant documentary productions, that thereafter it was agreed that sales from BMG referrals would be excluded from his commission. I also accepted his evidence, which in my view was entirely consistent and logical, that the only

other condition which was agreed was that the commission would not be paid until the customer had paid.

34. In arriving at this view, I had regard to the fact that the first time it was suggested that a written policy might apply was when Kathryn Colborne (now Kathryn Bowers) mentioned it to the claimant and his wife in an email on 27 September 2019 at 15:01 (P168). Also, in her evidence, Rachel Houghton referred to an email from Linda Wheatley, the BMG Compliance Director", on 1 July 2019 at 13:21, to "everyone – BM" when she sent "various Company policies" including the Commission Agreement which had been "reviewed with no changes" (P98-100). Also, in support of her contention that the claimant was aware of the BMG Commission Agreement, Rachel Houghton referred to an email which she had sent to an email group called "Buzzards" on 18 March 2019 at 10:18 (P93). She stated in that email: *"Jobs not invoiced within one month of job completion will not be commissionable (unless with prior agreement of Rachel H).*

35. However, there is no reference in that email to Concept. There is only reference to "Glasgow" and Business Moves (Glasgow) Ltd was within the "Business Moves" Group". In any event, the claimant had no recollection of receiving this email; he received a commission payment in July 2019 when this condition did not appear to have been applied (P383–384); Rachel Houghton was not a Director of Concept at any time during the claimant's employment; the claimant's line manager was John Kane (Director and part owner of Concept) and then when he left, the claimant reported to Simon Darvall (also a Director and part owner of Concept).

36. I accepted the claimant's evidence that he was not made aware of the Commission Agreement when he started his employment with Concept (P54-58). The first time he saw a copy of the Agreement was when one was sent to his solicitor in August 2020 in connection with the employment tribunal proceedings. He accepted that he did receive a copy of the BMG "Staff Manual" (P319–382). At page 64 of the Manual (P382), there is a heading, "**14 COMMISSION POLICY – IN PROGRESS**". However, there are no details and no such "Commission Policy" was ever sent to him.

Claimant's submissions

37. The claimant's solicitor submitted that the complaint of unpaid commission was a complaint of unlawful deduction from wages or, in the alternative, breach of contract. So far as the equity shareholding was concerned, this was a claim for damages in respect of breach of contract.

38. She submitted that the issue was whether a contract had been formed and what were the essential elements of that contract.

Commission

39. The claimant's solicitor submitted that the claimant had negotiated "bespoke terms and conditions" with John Kane and Simon Darvall. Agreement was reached on the essential terms and conditions and they were certain. There was also surrounding evidence to support the "unique" contract of employment which had been agreed.

40. She further submitted Simon Darvall who was still involved in the BMG business could have given evidence but he did not do so. She invited me to accept, therefore, the claimant's evidence that it was agreed that he would receive 2.5% commission on sales, with only two exceptions: sales which had been generated by Business Moves and payment to be made by the customer before the commission would be payable. In this regard, she referred to paragraphs 24 –27 of the claimant's witness statement.

41. She submitted that, *"there were three businessmen having these discussions. The claimant was a man of business negotiating bespoke terms. The claimant was clearly distanced from other employees. He saw himself investing into a share of a business."*

42. The claimant's solicitor then went onto refer to the contemporaneous email evidence which she submitted supported this complaint. She referred to the claimant's email of 19 October 2018 at 16:35 to Kathryn Colbourne (P66/67) in which she enquired about the commission. Ms Colbourne replied at 16:43 (P66) to advise that he should check with John Kane. She could have referred

the claimant to the Commission Agreement, if it applied, but she did not do so.

43. Although the term in the contract of employment about commission was "basic" and "simple", it was not uncertain and it did not mean that agreement was not reached. Also, the respondent accepts that the Commission Agreement was never sent out to the claimant.

44. The claimant's solicitor submitted that the, *"highpoint of the respondent's case"* was the email of 1 July 2019 at 13:29 from Linda Wheatley, the "Group Compliance Director" when she advised "everyone – BM" that there had been a "Company Policies Review" (P98–101). But, the first time the Commission Agreement was brought specifically to the claimant's attention was the email exchange between Kathryn Colbourne and the claimant's wife on 27 September 2019 at 15:01 (P168) and that was sent after the decision had been taken to close the Concept business.

45. The claimant's solicitor further advised that she disputed the assertion by the respondent that the offer of employment did not create a contract as the wording was vague and ambiguous. The claimant's employment commenced on these terms and conditions and the payment of commission was part of the contract, subject to the two conditions which were agreed and which the claimant gave evidence about.

46. She submitted that whatever "custom and practice" might have applied to other employees was irrelevant to the contract the claimant had with his employer. She submitted that until the last month of the claimant's employment, the "custom and practice" for the claimant was that he received and accepted payments of commission subject to the two agreed conditions'

Equity shareholding

47. The claimant's solicitor submitted that the issue was also whether a contract had been formed: was there an intention to create legal obligations and were the terms certain.

48. Once again, there was only the claimant's evidence about what had been agreed. She submitted that the agreement was recorded in the "Offer of employment" (P62). So far as the terminology was concerned, she submitted that the use of the word "Equality" was a spelling mistake. Indeed, when she gave evidence, the respondent's witness, Kathryn Bowers, accepted that was so. There was also supporting evidence as to the claimant's position in the form of the email correspondence which he had with Simon Darvall. In this regard, she referred to paragraph 13 of the claimant's witness statement.

49. She submitted that it was clear that Mr Darvall accepted that it had been agreed that the claimant would be given a 25% shareholding in Concept.

50. There had been a suggestion that the claimant had only raised the matter latterly but when she gave evidence, Ms Houghton accepted that he had raised the matter in March 2019 and that it was an ongoing issue. The claimant's solicitor submitted that, *"he wasn't looking for a pay-out but the shares".*

51. Further, Ms Houghton said that she did not know why Simon Darvall didn't transfer the 25% shareholding.

52. In summary, the claimant's solicitor submitted that there was an intention to create a legal obligation: agreement had been reached on the essential terms of the contract and the terms were certain. Nor was there ever any suggestion that a different class of shares would be introduced. Simon Darvall accepted that he was capable of transferring the 25% shareholding to the claimant.

Respondent's submissions

53. The respondent's Counsel spoke to "Outline Submissions" which are referred to for their terms.

54. In support of his submissions, he referred to the following cases:

Agarwal v Cardiff University & another [2019] ICR 433

Arnold v Britton [2015] AC 1619

Delaney v Staples [1992] IRLR 191

New Century Cleaning Co Ltd v Church [2000] IRLR 27

Chandhok v Tirkey [2015] ICR 527

McArthur v Lawson [1877] 4 R 1134

55. Counsel submitted that the sums claimed as commission were not sums properly payable in terms of s.13 (3) of the Employment Rights Act 1996 ("the 1996 Act"). He reminded me that the onus was on the claimant and submitted, with reference to ***Agarwal***, that the respondent was under no legal obligation to pay the sums claimed.

56. Counsel further submitted that: -

"The letter dated 18 October 2018 (P61–64) does not constitute a contract between the claimant and the respondent.

*In any event, on a true construction, the words relating to commission do not support the interpretation that the claimant places on them (**Arnold** per Lord Neuberger of Abbotsbury PSC at para 15).*

*For the same reasons, **mutatis mutandis**, the claimant has no contractual right to the commission claimed.*

The commission as calculated by the respondent is the sum total of his entitlement and it has been paid in full." (P27)

57. Counsel further submitted that, *"the claimant had failed to prove his case in law or, on the balance of probabilities, on the evidence.*

Applying the statutory test, the starting point in this case, is whether the sums claimed were 'properly payable'.

> *'(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly paid by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."* **(S13)(3)(ERA 1996)**

58. Counsel then referred to paragraph 18 of the Judgment of the Court of Appeal in ***Agarwal.***

59. Counsel then went on in his submissions to refer to the averments in support of this complaint in the paper apart to the ET1 claim form, at paragraphs 3 and 8 (P23/24): -

> *"3. The parties reached agreement on the claimant's terms and conditions of employment*
>
> *The agreement was recorded in a letter to the claimant from John Kane on behalf of the respondent dated 18 October 2018.*
>
> *8. The appointment letter of 18 October 2018 (P61-64) set out the claimant's contractual entitlement to*
>
> *sales commission as: Sales Commission 2.5%"*

60. Counsel submitted that, *"that provision does not give rise to the obligation that the claimant asserts. The 18 October letter is a conditional offer. It is subject to the following conditions:*

> *(1) Concept Office Furniture Ltd receiving two satisfactory references (P61, paragraph B)*
>
> (2) *The claimant entering into a contract of employment within one month of the date of the 18 October letter."*

61. Counsel submitted, with reference to ***Chandhok*****,** that this complaint was restricted to that set out in the ET1 paper apart and submitted that as neither of these two conditions had been met, the letter did not constitute a contract, as relied upon by the claimant.

62. He also submitted that the words in the offer *"do not support the construction placed upon them by the claimant. The words do not define e.g. (1) what transactions constitute "sales"; (2) when and how the "sales" give rise to an amount that is subject to the 2.5% commission rates; and (3) and when the commission becomes properly payable".*

63. Counsel also submitted that the commission, *"was subject to a Commission Policy"* and that, *"John Kane had explained to the claimant that commission*

was not payable in orders referred to the claimant via other companies in the Business Moves Group. This was confirmed by Kathryn Bowers (then Colbourne)".

Equity shareholding

64. Counsel relied on the same submissions in relation to this complaint. He also submitted that the phrase "equality Shareholding of 25%" is *"void for uncertainty"* and referred to ***McArthur*** in support of his submission that: *"a contract which cannot be enforced by specific implement… is no contract at all and cannot form the ground of an action of damages".*

65. Counsel then went onto make the following submissions:-

"(1) The term "equality" is meaningless in its context. That proposition is supported by the claimant's evidence in cross examination.

(2) There is no specification of the type of shares to be issued.

(3) There is no proposition as to how the shares would be issued.

(3) (sic)*The respondent, Concept, is a Company that is wholly owned by Business Moves (Glasgow) Limited. All 1,000 of the allotted shares have been issued and paid for* (P412-413). *No further shares could be issued without shareholder approval. That is not something that is within the power of the respondent to do.*

(4) The agreement that the claimant describes in his witness statement is not reflected in the letter of 18 October 2018. ***(Claimant, witness statement paragraph 9)***.

(5) Concept has no power, of itself, to transfer shares to the claimant.

*(6) There would be a requirement for shareholder approval for the issue of further shares (****see e.g. Sharon*** (sic) ***Houghton, witness statement, paragraph 40)***

(7) Or there would need to be an agreement by a shareholder to transfer shares to the claimant.

(8) This claim is against the respondent Company and not any of its shareholders. The Tribunal is being asked to make the respondent to be liable for failing to something that it could not do. The respondent could not give effect to a court order for specific implement in respect of 25% shareholding."

33 In any event, it is not reasonably clear from the claimant's evidence that John Kane were (sic) *committing the respondent to deliver to the claimant a 25% shareholding in the respondent Company.*

34 The claim falls to be dismissed."

Discussion and decision

66. I revisited my findings in fact in light of Counsel's submissions, but remained firmly of the view that they were well-founded, particularly as to the terms of the contract of employment, between the parties. I had no difficulty rejecting Counsel's submissions, therefore, and deciding that the submissions by the claimant's solicitor, in respect of both complaints, were well founded.

Commission

67. I am satisfied that that the claimant was entitled, contractually, to commission at the rate of 2.5% on sales, but subject to two conditions:

(i) he would not be entitled to any commission on sales that came via the Business Moves Group; and

(ii) he would not be paid commission until the customer had paid.

68. This was agreed by the claimant and John Kane and reduced to writing (P61-64).

69. I am satisfied that there was an unlawful deduction from wages by the respondent in respect of their failure to pay the claimant the full amount of commission due to him.

70. It was accepted by the respondent that were I to find that the respondent was liable to pay commission, that the sum due, in accordance with the claimant's witness statement at paragraph 45, would be **£6,013.75,** but that this would be subject to the appropriate deductions for income tax and national insurance. I shall issue a Judgment to that effect.

Equity shareholding

71. Also, on the basis of my findings in fact, I was satisfied that there was a legally-binding agreement that the claimant would receive a 25% shareholding in ***Concept***. Use of the word "equality" in the "Offer of employment" (P62) was clearly a typing error. Simon Darvall accepted himself in email correspondence that the claimant was due a 25% shareholding; and Mr Darvall had power to effect such a transfer.

72. I am satisfied, therefore, that the respondent was in breach of contract in respect of their failure to give the claimant that 25% shareholding. I shall issue a Judgment to that effect.

Damages

73. So far as an award of damages for the respondent's breach of contract was concerned, as I recorded above, further information was provided shortly before the tribunal hearing in the form of a supplementary witness statement of Rachel Houghton. The claimant's solicitor had not had an opportunity of considering this and taking instructions. Accordingly, in light of my decision, I direct the parties to liaise in this regard, in the first instance, with a view to agreeing an extrajudicial settlement. Should they fail to do so, it will be necessary to fix a further hearing to determine the level damages and issue a Judgment.

N Hosie
Employment Judge

09 January 2021
Date of Judgment

Date sent to parties **25 January 2021**