EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106683/2020

Held in Glasgow on 9, 10 and 11 August and 1 September 2022

Employment Judge M Robison

Mr J Davidson	**Claimant Represented by Mr K McGuire - Counsel**
Steven Anderson and Peter McGovern t/a Ashwood Car Service Centre	**Respondents Represented by Mr M Foster - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The correct respondent is Steven Anderson t/a Ashwood Car Service Centre.

2. The respondent shall pay to the claimant the following sums:

    a. The sum of **FOUR THOUSAND TWO HUNDRED AND TWENTY FOUR POUNDS** (£4,224) in respect of a breach of regulation 14 of the Working Time Regulations 1998; and

    b. The sum of **ONE THOUSAND TWO HUNDRED AND EIGHTY POUNDS** (£1,280) in respect of the failure to provide particulars of employment in terms of section 1 of the Employment Rights Act 1996 and section 38(2) of the Employment Act 2002.

3. All other claims are dismissed.

REASONS

Introduction

1. The claimant lodged a claim with the Employment Tribunal on 23 October 2020, claiming unfair constructive dismissal, breach of contract (notice pay), failure to pay holiday pay and other arrears of pay. The respondent entered a response resisting the claims.

2. This case has a long procedural history which has no bearing on this decision. Suffice to say the case was eventually listed for a three day in person final hearing to take place on 9, 10 and 11 August 2022.

3. Although evidence concluded in those three days, a further day was listed for oral submissions, which took place on 1 September 2022. Parties were then invited to submit any relevant comments on the implications of the decision of the Court of Appeal in *Pimlico Plumbers Ltd v Smith* (No.2) 2022 EWCA Civ 70.

4. Following my review of the file prior to the commencement of this hearing I noted that the claim included unpaid holiday pay and other arrears of pay which apparently stretched back to the commencement of the claimant's employment in 2007. I was aware that it had previously been determined that certain time bar points would be argued at the final hearing.

5. I invited the views of Mr McGuire and Mr Foster at the outset regarding the desirability of considering at least some of the time bar points separately prior to the substantive issues, since I considered that might save time in considering detailed evidence which might otherwise be time barred or prescribed.

6. Following a short adjournment, Mr McGuire confirmed that he accepted that, in respect of the claims for arrears of pay claims relying on section 13 of the Employment Rights Act 1996, the amendments to section 23 inserted by the Deduction from Wages (Limitation) Regulations 2014 for claims after 1 July 2015 meant that any arrears would prescribe prior to two years before the claim was lodged. He therefore conceded that he could only claim for such arrears back to October 2018.

7. He confirmed that the holiday pay claim, which was a claim relating to untaken holidays which would otherwise have been unpaid, was pursued as a claim under regulation 30 of the Working Time Regulations 1998. He advised that he would argue that all untaken holiday had been carried over, and in any event on the provisions allowing for an extension of time.

8. Given that clarification, it was not necessary to hear further submissions/evidence on the time bar point at the outset, but it was agreed that any outstanding time bar points would be held over until after evidence was heard.

9. During the hearing, the Tribunal heard evidence from the claimant, from Mr C Menzies, his accountant, and from his wife, Mrs M Davidson. For the respondent, the Tribunal heard from Mr S Anderson and Mr P McGovern as well as by video from Mr G Shaw, the respondent's accountant assistant.

10. The Tribunal was referred by the parties to a number of productions from a joint bundle of productions, which are referred to by document or page number as appropriate.

Correct respondent

11. During the course of evidence, it emerged that Mr McGovern had retired from the partnership in January 2020 (having worked to do a handover in February and March 2020).

12. There was therefore a discussion during submissions regarding whether the claim was correctly pursued against both Mr Anderson and Mr McGovern.

13. Mr Foster suggested that Mr McGovern could be liable for any defaults which stemmed from periods prior to his retirement. I did not accept that submission. I accepted the submission of Mr McGuire on this matter, that is that the correct respondent is the employer as at the date of termination of employment.

14. Since Mr McGovern had retired from the partnership by September 2020 when the claimant resigned, Mr Anderson was at that time operating as a sole trader trading as Ashwood Car Service Centre, so he is the correct respondent.

15. The claim is therefore dismissed against Mr McGovern.

Findings in Fact

16. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant and material facts admitted or proved.

17. The claimant was employed as a motor mechanic with the respondent from 1 October 2007 until he resigned effective on 5 September 2020.

18. Following an interview before the commencement of his employment, an agreement was reached that the claimant would be paid each week the sum of £300 in cash. Although neither the claimant nor the respondent described it as such, this was a "net wage agreement" whereby the claimant would receive £300 each week in cash and the respondent would be responsible for tax and national insurance. The respondent confirmed this agreement having spoken to their accountant who confirmed that such an arrangement was possible.

19. Shortly after the claimant's employment commenced, the respondent took on another employee on the same arrangement, a Mr J Quinn.

20. Thereafter, and throughout the claimant's employment, there were four people working at the service centre (hereafter "the garage"): Mr Anderson, Mr McGovern, the claimant and Mr Quinn. Prior to his retirement in January 2020, Mr McGovern took proportionately more to do with administration and Mr Anderson took more to with the mechanical side of the business.

21. The claimant worked Monday to Thursday, 8 am to 5 pm and latterly each Friday from 8 am until 12 noon, with a paid morning break for around 20 minutes at around 10 am and a half an hour for lunch taken at around 12.30.

22. The claimant was initially paid as agreed £300 in cash each week. He received pay slips initially on a weekly basis, then on a monthly basis.

23. No contract of employment or particulars of employment were issued then or since.

Holidays

24. At his initial interview, the claimant was advised that he would be entitled to the normal holiday entitlement. At that time that was 23 days, including public holidays. Although the statutory entitlement increased to 28 days in or around late 2007, the claimant's paid holiday provision remained 23 throughout his employment.

25. The claimant was permitted to take three weeks' paid holidays per year (that is 15 days), usually two weeks in or around July and one later in the year, as well as the following public holidays – 1 and 2 January, Easter Monday, one bank holiday in May, Glasgow Fair Monday, September weekend Monday and 25 and 26 December.

Issues around pay

26. Every couple of years, the claimant raised concerns about his pay. These related particularly to a request for a pay rise. He also raised concerns on a number of occasions about the level of his gross pay, and the level of tax which he was paying, which he believed was reducing. The claimant was told that he was receiving the level of pay which had been agreed.

27. In or around 2016, the claimant received a wage increase to £320 per week, paid to him in cash.

28. The claimant and Mr Quinn would be paid a cash bonus at Christmas. On one occasion, Mr Anderson also gave Mr Quinn an additional £500 as a loan which he paid back.

Nest pension

29. In or around April 2017, the Government introduced a scheme of auto-enrollment in workplace pensions, which required even small employers to enroll their employees in a pension scheme and to pay employer contributions, while employees who did not opt out also required to contribute. One of the providers is called NEST and from May 2017 (page 27/1) the claimant was enrolled in this workplace pension scheme.

30. Although neither the claimant's net pay nor gross pay was altered by this pension enrollment, (documents 26 and 27), this was accounted for through an adjustment to the claimant's tax code which (for example during 2017) prior to April was S1100L and after April was S1150L.

Holiday August 2019

31. In or around August 2019 the claimant, having taken two weeks of annual leave earlier in the year, requested a further two weeks' leave.

32. The claimant was advised that he only had one week (5 days) of paid annual leave left and although he was permitted to take an additional five days, these were unpaid.

33. Although this was not reflected on the claimant's wage slip, Mr Anderson adjusted his cash wage to take account of this. Mr Anderson hand wrote the adjustment on the wage slip, the cash sum being reduced from £1280 to £960 (21/5).

Furlough

34. Towards the end of March 2020, the claimant attended for work and was told to go home because of the lockdown related to the pandemic. He was subsequently advised that he would be put on furlough, to which the claimant agreed. After consulting his accountant, Mr Anderson advised the claimant that he would receive 80% of his net pay. The claimant agreed to accept 80% of his previous net pay as wages while on furlough.

35. Mr Anderson, because the garage services were deemed essential, decided to keep the garage open and to continue to work. The claimant mistakenly believed that the garage had closed and that Mr Anderson and Mr McGovern were on furlough, as well as Mr Quinn.

36. On or around 17 April 2020, having heard nothing further about furlough, the claimant called into the garage, and was given £220 cash "advance" on furlough wages due. The claimant was asked by Mr Anderson for his key fob for the garage because his had become defective.

37. On 1 May 2020, Mr Anderson sent a handwritten note to the claimant with an accompanying cheque which stated as follows: “Furlough money for April, this is made up on the following: 4 x weeks @ £230 = £1280; 80% of above (furlough) = £1024. Less £220 cash already received = £804. That is you paid up till Friday 1st May. Hope above is clear, if any problems give me a phone” (17/2).

38. The claimant also received a handwritten note at the end of May, which stated, “Furlough Monday for May 2nd May to 29 May 4 x weeks @£320 = £1280; 80% £1024” (20).

39. Thereafter furlough payments of £1024 per month were paid into the claimant’s bank account.

40. Towards the end of May/beginning of June 2020, Mr Quinn was taken off furlough and returned to work. Mr Anderson asked him to return because he, rather than the claimant, did work with tyres which was a higher proportion of the work at the time.

41. In or around July 2020, Mr Quinn was given a car which had been gifted by a customer since, unlike the claimant, he did not have a car at that time. He was put on the company insurance.

42. The claimant had initially intended to take holidays in July 2020 but was informed that the campsite which he had booked was still closed on those dates due to covid. The claimant then moved his holidays to the first two weeks in August, when he took 10 days of paid annual leave (whilst on furlough).

43. On 16 August 2020, the claimant made a request by text to Mr Anderson for his P60 and wage slips for his pay during furlough (23/6).

44. On 19 August 2020, Mr Anderson advised by text that he had sent over P60 and wage slips. That text also stated, “will get you started back to work on Monday 31st August”.

45. On 22 August 2020, the claimant received pay slips for April, May and June. These showed that the respondent’s accountants had calculated 80% of gross

pay in regard to furlough payments. The net payments for April, May and June were as follows: April £1192.75; May £1192.61; June £1169.78 (30).

46. On 23 August 2020, the claimant went into the garage to collect tools to fix his wife's car. He then raised the issue of taking holidays in November.

47. On 26 August 2020, the claimant texted Mr Anderson as follows: "right enough Stevie she's wanting to book holiday this morning for end November. I got 1 week left of my 3 weeks can we do same as last year 1 week holiday pay 1 unpaid". Mr Anderson replied, "Ye, let me know dates" (18/3).

48. Around this time the claimant found out from his wife who had checked his pay slips that the furlough pay he received did not match the wage slips. The claimant was very upset to have discovered that he had not received around £150 net pay each month that he believed he was due. He was aggrieved too because he had become aware that Mr Quinn had returned to work earlier than him. He came to believe that Mr Quinn was being treated more favourably than him. He was so upset by the way he perceived he had been treated that he thought he was on the verge of a nervous breakdown.

49. On 31 August 2020, the claimant tendered his resignation, in a letter which stated as follows: "please accept this letter as notice of my resignation from my position at Ashwood Car Service Centre. As I was never issued with a contract of employment I need only provide you with the statutory one week notice, therefore completing my employment on 5th September 2020. I feel it appropriate to remind you that it is a legal requirement for employers to send a P45 to all ex-employees post their employment terminating. I look forward to receipt of all outstanding wage slips and my P45 in due course" (22).

50. That short letter was accompanied by a lengthy letter with appendices dated 1 September 2020 which was headed "misappropriation of funds/wages theft" in which the claimant, having taken advice and investigated the circumstances, set out evidence which he believed supported his view that he had not received the correct pay for a number of years in regard in particular to holiday pay, taxable income and underpayment of income from the HMRC furlough scheme. He

believed there was an underpayment of over £10,000. In that letter the claimant stated that "I trust we can resolve these matters as soon as possible" (23).

51. These letters were handed in to the garage by the claimant's neighbour.

52. The claimant did not work his notice but instead was on sick leave.

53. The claimant subsequently received payslips for July 2020 showing a net furlough pay of £1169.78 (30/2) and for August 2020 of £1169.78 (30/3).

54. A further payment for holiday pay was paid on 6 September 2020 (30/3). This shows holiday pay of 57.60 hours paid at 9.53 totaling 548.93, and sick pay of £38.34.

55. The claimant was prevented from taking paid leave of five days to which he was entitled each year during the whole of his employment, totalling 61 days.

Tax rebate

56. When the claimant was investigating the level of his furlough pay, the claimant accessed his Government gateway account and believed that he was due a tax rebate of approximately £250.

57. This related to a decision of the claimant's wife Mrs Davidson to transfer 10% of her annual tax allowance to her husband.

58. This tax rebate was repaid through an adjustment to the claimant's tax code. It was repaid through PAYE tax as reflected in the claimant's pay slip for March 2020 which he did not receive until after he had resigned. This shows tax of £129.70 was deducted, which when taken with the tax which the claimant would usually pay of £120.09, amounted to a repayment of tax of £249.79 (29/6).

Situation post dismissal

59. Following his resignation, the claimant sought alternative employment but was unsuccessful. His wife assisted him to complete a CV and wrote various applications for him but he got no replies. He was in consultation with the Job Centre, where the staff confirmed that very few employers were hiring because of the ongoing pandemic at the time.

60. The claimant did not receive JSA for three months because he had resigned his employment. He was entitled to JSA for six months from 14 January 2021 until 22 July 2021.

61. The claimant has recently set up as self-employed.

62. It was the claimant's intention to continue working with the respondent until he retired.

Relevant law

Constructive dismissal

63. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996 (ERA). Section 94(1) states than an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) states that an employee is dismissed if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is commonly known as "constructive dismissal".

64. In *Western Excavating Ltd v Sharp* 1978 IRLR 27, the Court of Appeal set out the general principles in relation to constructive dismissal. Lord Denning stated that "An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract".

65. The question whether the employer has committed a fundamental breach "going to the root of the contract" is to be judged according to an objective test and not by the range of reasonable responses test (*Tullett Prebon plc v BGC Brokers*

[2011] EWCA Civ 131; *Bournemouth Higher Education Corporation v Buckland* 2010 ICR 908 CA). The EAT has since confirmed in *Leeds Dental Team v Rose* 2014 IRLR 8 that it is not necessary to show a subjective intention on the part of the employer to destroy or damage the relationship to establish a breach.

66. The duty of mutual trust and confidence is a term which is implied into every contract of employment. This means that an employer must not, without proper and reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee (*Mahmud v Bank of Credit and Commerce International SA* 1997 IRLR 462 HL, *Baldwin v Brighton and Hove City Council* 2007 IRLR 232 EAT).

67. When considering whether there has been a breach of the implied term, "the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it" (*Wood v WM Car Services Ltd* 1982 ICR 666 EAT, per Mr Justice Browne Wilkinson).

68. There may be a series of individual actions on the part of the employer which do not in themselves amount to a fundamental breach, but which may have the cumulative effect of undermining the mutual trust and confidence term implied into every contract of employment. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal. This is commonly referred to as "the last straw" (*Lewis v Motorworld Garages Ltd* 1985 IRLR 465 CA). The last straw must contribute something to the breach (even if relatively insignificant) (*Waltham Forest v Omilaju* 2004 EWCA Civ 1493).

The law relating to unlawful deductions of wages

69. Section 13 ERA states that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by virtue of a statutory provision or relevant provision of the worker's contract; or the worker has previously agreed in writing that the deduction could be made.

70. Section 23(1) ERA states that a worker may present a complaint to an employment tribunal that his employer has made a deduction from his wages in contravention of section 13.

71. Section 23(2) ERA states that an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of payment of wages from which the deduction was made.

The law relating to holiday pay

72. Where the claimant is underpaid or has not been paid at all for leave actually taken then a claimant can pursue a claim for breach of section 13 under section 23 of the ERA.

73. However, where a worker does not take holiday because it would have been unpaid, the claim is for damages under regulation 30 of the Working Time Regulations 1998 (*Sash Windows Workshop Ltd v King* 2015 IRLR 348 EAT).

74. Regulations 13 and 13A of the Working Time Regulations (WTR) set out a worker's entitlement to four weeks' leave and additional leave of 1.6 weeks.

75. Regulations 13(9) WTR states that leave to which a worker is entitled may be taken in instalments but (a) it may only be taken in the leave year in respect of which it is due and (b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

76. Regulation 14(2) WTR states that a worker can make a claim for payment in lieu of untaken annual leave on the termination of their employment. Regulation 16 states that a worker is entitled to paid leave taken in relation to regulations 13 and 13A.

77. Regulation 30 WTR states that a worker may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under regulations 13 and 13A; or has failed to pay him the whole or any part of any amount due to him under regulation 14(2).

78. Regulation 30(2) WTR states that subject to extensions for ACAS conciliation, an employment tribunal shall not consider a claim under regulation 30 "unless it is presented (a) before the end of the period of three months…beginning with the date on which it is alleged that the exercise of the right should have been permitted…or as the case may be, payment should have been made; (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three…months".

Written particulars of employment

79. Section 1 ERA requires all employers to provide workers with a written statement of particulars of their employment. By reason of section 38(2) of the Employment Act 2002, where the tribunal finds in favour of the worker, and the employer was in breach of the duty under section 1 ERA, the tribunal must award at least two weeks' pay, and where it considers that it is just and equitable to do so, may award four weeks' pay.

Tribunal's deliberations

Observations on the witnesses and the evidence

80. I have concluded that the evidence I heard from both parties cannot be said to be wholly reliable, not least because some relevant events dated back to 2007. However, the conclusions I have reached and the facts I have found are supported by subsequent events and actions of parties.

81. Mr Foster argued persuasively that I should prefer the evidence of the respondent's witnesses, and in particular that the claimant's evidence was unreliable. I did find the claimant's evidence difficult to follow in places. He did appear to struggle with the questions he was asked and he himself at one point said that he was "baffled" by the questions. Although I fully accepted that he did not understand the accounting behind the sums, I thought that there were questions which he clearly knew or ought to have known the answer to but which he did not answer.

82. However, notwithstanding the way that the claimant responded to Mr Foster's questions regarding his complaints, I got the clear impression that he had a genuine sense of grievance although it would appear that may well not have been justified, as discussed further.

83. I therefore accepted that the claimant's evidence was not reliable although I did not take the view that there was any deliberate intention to cover up the truth, rather simply that the claimant saw things differently from his own perspective.

84. I accepted the evidence of Mr Menzies as wholly credible and broadly reliable.

85. I also accepted that Mrs Davidson, although she latterly came across as very indignant during cross examination, was wholly credible and I accepted her evidence specifically in relation to holidays.

86. I did not accept all of the evidence of Mr Anderson as credible. In particular, I did not accept his evidence about the agreement relating to holidays. Likewise, I did not accept all of the evidence of Mr McGovern as credible. I have set out my rationale for this conclusion below.

87. With regard to Mr Shaw, he had produced a letter setting out what was said to be his evidence, which was perhaps misleading. However, I accepted the evidence given by Mr Shaw during the hearing as credible and broadly reliable.

88. There were three particularly significant findings of fact in this case, relating to whether or not there was a net pay agreement; the paid holidays which the claimant took or was not permitted to take; and the conduct of the employer argued to justify breach of contract for the purposes of the unfair constructive dismissal claim. I now explain the rationale for my findings in relation to each of these issues in turn.

Discussion/findings relating to "net pay agreement"

89. The question whether the claimant had entered into a net pay agreement was a crucial one in this case. Mr McGuire accepted that for the claimant to succeed in relation to his claim for the balance of gross wages he would have to overcome the hurdle that he was paid a fixed net amount during the course of his

employment with the respondent. Although the claimant's evidence was that he does not remember explicitly entering into a "net wages" agreement, Mr McGuire accepted that irrespective of what was agreed at interview, the claimant received a net payment of wages throughout the whole of his employment.

90. Mr Foster, in submissions supporting the finding of a "net pay agreement", stressed this element too, and in particular that the claimant was not aware of his gross wage, or "top line", whereas he was aware of his net pay.

91. Indeed although we heard evidence that the claimant had, throughout his employment, raised concerns about fluctuating gross pay, which I understood was accepted by Mr Anderson and Mr McGovern, there is no dispute that his actions in continuing to work for the respondent indicated that he accepted that he would be paid net.

92. I came to the view that the parties had indeed entered into a "net pay agreement" even though it had not been described as such by either party. This is unusual arrangement, but both accountants gave evidence that although unusual they were familiar with such an arrangement and had clients who also operated on this basis. They both explained that under such agreements the employer would get the benefit of the fluctuation in tax rates.

93. It seems clear that this was what was agreed at the interview, but in any event, as Mr McGuire pointed out, the claimant continued to work under that arrangement. While the claimant did not apparently understand the consequences of such an arrangement (manifested in particular by the decision of his wife to transfer some of her annual allowance to him), that is nothing to the point where an agreement is reached. The simple undisputed fact is that he continued to work for the respondent for many years, and must be deemed to have accepted the arrangement.

Discussion/findings relating to holidays

94. The other important finding in fact relates to holidays in respect of which there was also a conflict of evidence.

95. Mr McGuire submitted that the claimant's evidence that he was entitled to 23 days paid annual leave should be accepted, this being consistent with the claimant being told in August 2020 and July 2019 that he had to take a week of unpaid leave because his entitlement to paid leave had been or (by the end of the year) would be exhausted. He submitted that the respondent's position, that the claimant was always entitled to 28 days, was not convincing, not least because this exceeded the statutory requirements at the start of his employment.

96. He also argued that the Tribunal should not accept Mr Anderson's evidence that the claimant would be given paid leave in addition to a two week period of leave and eight statutory/public holidays, because he accepted that the claimant would not always get the 'extra' holiday and could be required to work on those days. The claimant's position was that he was not given those extra periods of holiday. Even if he was, he submitted that they could not properly categorised as holiday entitlement because he could be required to work on those days.

97. It is clear from the findings in fact that I accepted the claimant's submissions and concluded that the claimant was given 23 days of paid holidays per year, consisting of 15 flexible days annual leave and 8 public holidays. I came to that view for the following reasons.

98. Although the claimant's evidence was in many respects unreliable, I accepted his evidence that he had been permitted three weeks' paid holiday on top of the standard statutory holidays of 8 days. I also accepted the evidence of Mrs Davidson regarding which holidays the claimant had taken; and got the impression that this might have been a source of friction between Mr and Mrs Davidson, not least given their enjoyment of caravanning holidays.

99. Although urged to do so by Mr Foster, I did not in turn accept the evidence of the respondent for the following reasons.

100. It was apparent to me that Mr Anderson's position during evidence shifted three times. Initially he said that he had agreed at interview that the claimant would be entitled to 28 days. When Mr Foster returned to this point later in examination in chief, he confirmed that the claimant was given 28 days even before there was a legal entitlement to that. On cross examination he said that he had said "full

entitlement" at interview but had not mentioned any number of days or weeks. In re-examination he seemed to suggest that initially it was 24 days increasing to 28 days. Mr McGovern's evidence was clear that the claimant told at interview that he would get 28 days before workers were legally entitled to that.

101. It is simply not plausible that the respondent would offer more than the statutory minimum entitlement. There were several references to "three weeks" holiday during evidence and Mr Anderson's position was apparently that the additional days, up to 28, consisted of public holidays (of 8 days) and also other holidays around these public holidays and annual leave.

102. However, Mr Anderson's evidence on what happened around bank holidays was not entirely clear or consistent. In any event there was no mention initially, either in the ET3 or in his evidence, about the claimant being permitted additional days off around bank holidays, or days off in lieu or that there would be some kind or rota or alternating holidays between him and Mr Quinn. Crucially, the claimant was not asked about this in cross examination and it is apparent that is because this came out as the evidence went along. It was apparent too that this was not something which Mr Foster had been briefed on because this disputed fact was not put to the claimant beyond a general "you got three weeks plus statutory holidays to make up 28 days". While he was asked about the period between Christmas and New Year, beyond that there was no question about alternating days with Mr Quinn around banks holidays, and certainly no question about time off in lieu.

103. For the first time, the Tribunal heard that an employee might get the Tuesday off after Easter Monday during Mr McGovern's evidence. Further, the reference to days off in lieu only came up only when Mr McGuire put it to Mr McGovern in cross examination that the claimant was not always entitled to take the extra days around the public holidays that must mean that he was working. Mr McGovern accepted that he would be in on some days but that he would get a day off in lieu. However this was the first time it was mentioned and that was when presumably he realised that the argument that the claimant would sometimes get additional days around public holidays did not stack up.

104. Further there was no system for recording these additional days of holidays which the respondent alleged the claimant had received. Given that Mr Anderson said that whether the claimant would get these or not would "depend" and that he would alternate with Mr Quinn or he would get a day off in lieu if he worked them, it seemed to me that even in a very small operation there would need to be some system to keep a record of this. Although eventually Mr McGovern mentioned a desk diary, no paperwork was lodged relating to this.

105. I was alert to the fact that Mr Anderson had sat through the evidence of the claimant's witnesses (as was his right), as had Mr McGovern. Mr McGovern had therefore heard the claimant's witness evidence as well as that of Mr Anderson. I did note that when cross examined by Mr McGuire he was equally vague about which additional days the claimant would get but that unlike what Mr Anderson suggested, he said that it was "nothing to do with being busy". Further, Mr McGovern in evidence said he was used to a holiday system which was that "you got two weeks in the summer and a winter week" on top of statutory holidays.

106. The evidence around any other days being vague and unsubstantiated, I concluded that is in fact what was agreed, and what happened in practice; that is the claimant would get 15 days plus 8 days statutory holidays.

107. This view was fortified by the evidence I heard in regard to the claimant's request for leave in 2019, and in particular the request to take an additional two weeks, when the claimant had taken 10 days already. As Mr McGuire pointed out, if the claimant had taken 10 days already, as well as 1 and 2 January, Easter Monday and two days in May, then that was a total of 15 days plus a further 5 paid days which totalled only 20 days. This would mean that the claimant would have 8 days paid holiday left, which would have given him 5 days plus the September weekend and two days at Christmas, and he would thereby have been entitled to paid leave for those dates.

108. There was also evidence about a request in 2020, in the form of a text from the claimant to Mr Anderson, which stated "I got 1 week left of my 3 weeks can we do same as last year 1 week holiday pay and 1 unpaid" (23/6). This references the unpaid week which the claimant took in 2019 and to three weeks paid leave.

It seemed to me that if the system operated as the respondents say it did then it might be expected that the claimant would be told that if he wanted a further paid week that he could but would not be able to take additional days around bank holidays or at Christmas.

Discussion/findings/conclusions relating to constructive dismissal conduct

109. With regard to the way that the claimant was treated throughout his employment, I did not understand Mr McGuire ultimately to rely on that treatment to support his submissions that there was a breach of contract.

110. Much however was made of this during the hearing, and the claimant confirmed during cross examination that many of his concerns, relating to any less favourable treatment than Mr Quinn, or long delays in getting payslips, were unjustified.

111. Even when it came to the developments following the announcement of lockdown, the claimant appeared genuinely aggrieved but he did not raise these grievances with anyone. It was clear during cross examination that a number of his grievances were based on misunderstandings such as the fact that the garage was open and not closed; and the rationale for bringing Mr Quinn off furlough sooner; the circumstances around Mr Quinn being given a car by a customer and being put on company insurance; and the fact that the extra Christmas bonus he thought Mr Quinn got was actually a loan which he repaid.

112. As I understood his submissions, Mr McGuire, referencing the claimant's evidence about unfair treatment, noted that the claimant worked continuously for the respondent from October 2007 until the termination of his employment on 5 September 2020. He therefore accepted that if there was any prior breach that he had affirmed the contract by continuing to work for the respondent.

113. When Mr Foster argued that the constructive dismissal claim was time barred, this appeared to be based, as Mr McGuire pointed out, on a misunderstanding.

114. Mr Foster submitted that the claimant had referenced in his ET1 and in evidence that he considered that he had been "dismissed" in April 202, following the

incident with the key fob and therefore that the claim had been lodged more than three months after that.

115. I accepted Mr McGuire's submissions on this matter. The fact is that the claimant continued to work for the respondent so to the extent that there was any breach or he might have argued that there was a breach at that time (which it seems to me he did not) the claimant in continuing to work had to be accepted has having affirmed the contract.

116. Rather, in regard to the breach of contract to support any constructive dismissal claim, Mr McGuire's focus was on the alleged underpayment of furlough pay. This is what he relied on in regard to the breach to support the constructive unfair dismissal. This is discussed next in this judgment.

Tribunal's decision

Constructive dismissal

117. As discussed above, the focus of Mr McGuire's submissions that the claimant had been constructively dismissed was on events following the commencement of the pandemic but specifically the level of furlough pay.

118. At this time the claimant was very upset to have discovered that he had not received around £150 net pay that he believed that he was due. This compounded concerns that he had been harbouring that Mr Quinn was being treated more favourably than him. He was so upset by the way he perceived he had been treated that he thought he was on the verge of a nervous breakdown.

119. Mr McGuire submitted that the main reason the claimant resigned was the discovery in late August 2020 that he had not been paid the furlough pay to which he was entitled, which he found out after his payslips for some of the furlough period were provided to him. These were analysed by his accountant, Mr Menzies, who advised of the miscalculation of furlough payments. The respondent's accountant, Mr Shaw, accepted that the amount on the payslips had been calculated on the basis of the UK Government's furlough scheme. He accepted in cross examination that the amount stated on the payslips was the amount that he would have expected the claimant to have been paid; this is hardly

surprising, he argued, given that the furlough scheme guaranteed payment of 80% gross wages to employees.

120. Mr McGuire pointed out that there is no dispute between the parties that the claimant was paid only 80% of his previous net wages. It was when the claimant discovered he had been underpaid throughout the furlough period by reference to his furlough pay slips that he decided that he could not continue in his employment with the respondent. This is the point at which he finally lost trust in the respondent.

121. Mr McGuire submitted that the respondent's actions in underpaying the claimant during the furlough period amount to a breach of the implied duty of trust and confidence. The respondent did not have reasonable or proper cause for underpaying the claimant. The respondent's actions had the effect of destroying (or at least seriously damaging) the relationship of trust and confidence between the parties.

122. He submitted in the alternative that the claimant was contractually entitled to receive his correct wages under the furlough scheme. The respondent placed the claimant on furlough. The claimant agreed to go onto furlough as demonstrated by his actions. The quid pro quo, he argued, was that he would be entitled to be paid furlough on the basis of the furlough scheme. The respondent took advantage of the furlough scheme to receive payments from the UK Government calculated on the basis of payslips issued to its employees and not the amount of money actually paid to the claimant. This was confirmed by Mr Anderson who also confirmed that HMRC had not been informed of the correct position. The employer benefitted by getting more from the Government than the claimant actually got. The respondent was therefore under an obligation to the claimant to make the correct payment to him. He submitted that failure to do so amounted to a repudiatory breach of contract.

123. Mr McGuire also argued that the respondent was aware that the furlough scheme involved 80% of wages because this was widely publicised. While the payslips were not sent to the respondent until August 2020, the respondent received these before they were forwarded to the claimant. However no attempt was made to

remedy or rectify the situation although they could have taken remedial action then but instead simply forwarded incorrect wage slips to the claimant.

124. Mr McGuire argued that the claimant did not delay in resigning in response to the respondent's breach of contract. It was suggested to the claimant in cross examination that he had made up his mind to resign in April 2020. The claimant did not accept that suggestion. There can be no doubt that the claimant remained in employment with the respondent after April 2020. The claimant's letter of resignation is dated 31 August 2020, which is a matter of days after he received the payslips. He submitted that he claimant was unfairly constructively dismissed for the purposes of section 98(4) ERA,

125. Mr Foster in his submissions focused on the respondent's conduct. He submitted that there was no evidence to support the suggestion that the actions were done knowingly or with malice. If the accountant was acting reasonably but erroneously in calculating the claimant's salary and if no issue was taken by the employee, he submitted that conduct could not constitute grounds for claiming constructive unfair dismissal. If the employer reasonably but in error, where the error was not drawn to his attention, paid the claimant the wrong amount, it is hard to say that this could amount to a breach of trust and confidence. This is compounded by the claimant's awareness about the basis of the calculations, being his net pay, that he did not know any better and equally the employer did not know any better. All the evidence about the relationship between the parties points to the conclusion that if the claimant had spoken to Mr Anderson about it, then it would have been sorted. Without giving the employer a chance to even consider the matter he chose to decide that he was dismissed, but this was based on his view of the circumstances as a whole rather than the fact that he believed that he was paid the wrong amount.

126. I first considered Mr McGuire's alternative argument which apparently amounted to a breach of a contractual right to be paid in accordance with the furlough scheme. I asked whether the scheme was a statutory one because it seemed to me that it might involve a term implied into the contract by statute. As far as I can ascertain, and this accords with Mr Foster's understanding, the furlough scheme was simply a scheme which introduced the concept of "furlough" and provided for

employers to recover a proportion of pay from HMRC. Under the scheme all UK employers could claim a grant from HMRC to cover 80% of the wage costs of employees up to £2500 per month, for each employee put on leave during which time they were not required to work. However, the scheme itself was a direction from the Government to HMRC under the Coronavirus Act 2020 giving HMRC powers to implement the Coronavirus Job Retention Scheme.

127. The scheme itself does not directly affect the relationship between the employer and the employee. Rather it allowed the employer to agree with an employee that they will not require to come into work and it allowed an employer to recover a proportion of pay from HMRC. The result was that any agreement to "go on furlough" would involve an agreement between the employer and the employee that the employee would not require to work but that they would be paid less than their normal wages, the employer being entitled to reimbursement limited to 80% of gross pay or a maximum of £2500 per month.

128. It seems to me then that this amounts to an agreement between employer and employee to amend the contract of employment temporarily at least. Here Mr Foster's submission amounted to an argument that it was perfectly legitimate for Mr Anderson to have agreed with the claimant that he would pay 80% of his net wages. He points to the fact that this was what was paid in April, May and June without complaint from the claimant who must thereby be taken to have agreed to that pay while absent on furlough.

129. In my view, the fact that this might have been a mistake on Mr Anderson's part, albeit that it was a misunderstanding rather than a deliberate decision to limit his furlough pay and claim more from the Government, is beside the point. The fact is that Mr Anderson proposed, and Mr Davidson agreed, that he would receive 80% of his net pay while on furlough.

130. I concluded therefore that there was no breach of contract in regard to any term relating to pay during furlough because an agreement had been reached between the claimant and the respondent.

131. The question then was whether alternatively the failure to pay was a breach of the implied term of term of trust and confidence. The requirement is to consider

whether the respondent had conducted itself in a matter which was calculated, or if not, which was likely, to destroy or seriously damage the relationship of trust and confidence between the employer and the employee, where there was no proper and reasonable cause for the respondent's behaviour.

132. Given the above, that is that the claimant must be taken to have agreed to accept 80% of his net wage as furlough payments, the question then is whether the respondent's behaviour was, viewed objectively, likely to seriously damage the relationship of trust and confidence.

133. In this case the claimant had initially accepted that he would receive 80% of his net wages. As discussed above, in the unusual circumstances of payment of furlough, I accepted that it was a matter for an employer and an employee to agree the amount of pay they would receive. I did not accept that it was self evident or a quid pro quo that an employee would get 80% of gross wages, although that is what the Government was prepared to pay, but only up to a limit. I could not accept then that simply to pay 80% of net wages, in the unusual circumstances of a net pay agreement, could be said to be behaviour intended or likely to damage the relationship of trust and confidence (viewed objectively).

134. It could in any event be said that that circumstances of this case support the conclusion that the respondent did have "reasonable and proper cause" for his actions, given the conclusion above that there was no statutory basis to conclude that the claimant was entitled to 80% of gross pay, that being the result of a genuine misunderstanding on the part of Mr Anderson.

135. While the respondent's accountant had worked out the pay due on a gross basis, there was clearly a misunderstanding between Mr Anderson and Mr Shaw about how the calculations should be done and I conclude that there was no deliberate or intentional actions on the part of the respondent to underpay the claimant.

136. Further, as Mr Foster stressed in submissions, the claimant did not even raise this matter at all with Mr Anderson. Given that it is apparent that Mr Anderson had assumed that he was paying the claimant what he was due, Mr Anderson was not even made aware of any concerns.

137. I appreciated that Mr McGuire said that Mr Anderson could have looked at the wage slips when they came in, since he got them from his accountant first, albeit several months after the payments had been made. I do not however think that failure is sufficient to justify a conclusion that there has been a breach of trust and confidence. As Mr Foster argued, it was surely for the claimant, when he noted that the net pay showing on the pay slips was less than that which he had received, to go to his employer and explain his concerns. Given that I have accepted that this was a genuine misunderstanding, and given evidence regarding the relationship between the claimant and Mr Anderson, I accepted that it was likely that Mr Anderson would have looked into it, realised the error and probably amended the agreement.

138. While it may well be that the claimant's sense of grievance with his employers had been building up during furlough and even over the years given his concerns about the level of his gross pay, the claimant had never raised these issues with the respondent. Had he done so and had the respondent had an opportunity to explain the position, then the matter may have been resolved. Instead, he resigned and submitted a lengthy letter accusing the respondent of "theft".

139. While I accepted that from the claimant's perspective, he may well have come to the view that trust and confidence was seriously damaged, I could not however say that the respondent's behavior was conduct which, viewed objectively, was likely to seriously damage the relationship of trust and confidence, or indeed that it was conduct which the claimant could not be expected to put up with, or even that it was unreasonable. In these circumstances, I have found that the employer's conduct, from an objective standpoint, could not be said to breach the implied term of mutual trust and confidence.

140. In all these circumstances, I find therefore that the claimant was not dismissed in terms of the relevant provisions of ERA, and so that his claim for unfair dismissal cannot succeed and is dismissed.

Unlawful deduction from wages (section 13 ERA)

Gross pay

141. The claimant complains about not receiving the balance of gross wages over the years of his employment. As Mr McGuire conceded, while the claimant's position is that his salary should have increased throughout the course of his employment to reflect changes to his tax code that ultimately were to the benefit of the respondent, he cannot succeed in such an argument where the Tribunal, concludes that there was a net pay agreement, which is what I have found. Although Mr McGuire had accepted that any such claim could only extend to two years prior to the lodging of claim, given this conclusion the claimant cannot be entitled to any sums in respect of this head of claim.

142. I conclude that the failure to pay the claimant any balance between gross and net pay cannot be an unlawful deduction from wages, given the agreement reached between the claimant and the respondent.

Tax rebate

143. The claimant claims sums are due to him in respect of a tax refund of £249.79 in March 2020, which he discovered when reviewing his personal tax account online. The claimant argues that the failure of the respondent to make payment of the tax refund to the claimant amounts to an unlawful deduction from wages. Mr McGuire submitted that the evidence was that in the normal course this would be paid through salary, so that an employee would pay less tax in the month of the refund. This is reflected in the relevant payslip. This is a sum which is "properly payable". He argued further that notwithstanding any net tax agreement, a tax refund is of a sufficiently different nature/character to other tax payable by the employer so should not be categorised as falling within a net pay agreement; through which the right to any tax refund is forfeited.

144. Mr Foster argued that it was not clear from the evidence whether the respondent got the tax rebate. He submitted that it was apparent from the wage slip that no tax was paid on one occasion because a rebate was due, but he argued that this suggests a reimbursement rather than a payment, that is that the respondent did

not receive a sum of money. Given however there was a net pay agreement, he submitted that any overpayment would be due to the payer of the tax otherwise the claimant would receive more than the £320 net pay agreed in excess of his contractual right.

145. I preferred the submissions of Mr Foster. Although we heard evidence from two accountants in this case, their evidence indicated clearly that where there was a net pay agreement, it would be the employer who would benefit from any tax variation or tax refund. Only two examples were given where there might be a departure from that position, which was where there was a student loan and where a rebate related to a period prior to the current employment. I did not therefore accept Mr McGuire's submission that this rebate/refund/reimbursement was of a different character to other elements of gross pay.

146. I appreciate that this may seem harsh when this related from a transfer of part of Mrs Davidson's annual allowance, but I take the view that this is the unavoidable conclusion of a net tax agreement. It is unfortunate that the claimant did not appreciate the significance of the agreement he had reached otherwise he might have realised there was little value in such an arrangement.

147. There being no unlawful deduction from wages in respect of this matter, this claim cannot succeed and is also dismissed.

Furlough pay

148. The claimant claims the difference in pay between the amount he should have received as furlough and the amount he actually received. As Mr Foster accepted, there is no time bar issue here because the claim was raised within three months of the last in a series of deduction.

149. The logic of the conclusion above, that the claimant and the respondent had reached an agreement, was that he would receive 80% of his net pay as a consequence of being "furloughed", and not the 80% of gross pay reflected in his pay slips.

150. It does not however follow that this was an unlawful deduction from wages, because there was no statutory right to be paid 80% of gross wages and there

was no contractual right given the unprecedented nature of the agreement. There was however a verbal agreement and the claimant was notified of that agreement in writing in the form of a note, for example at page 19 in which it is stated that "that is you paid up till Friday 1st May". Further in that note Mr Anderson says "hope the above is clear, if any problems please give me a phone".

151. This led me to conclude, as above, that an agreement was reached between the claimant and the respondent for him to receive 80% of his net pay. There being no unlawful deduction from wages, this claim is also dismissed.

152. It may well be that the difference should be reimbursed to HMRC but that is of course a matter for the respondent.

Holiday pay – section 13 claims

153. The claimant submits that he suffered an unlawful deduction of five days' wages in respect of holidays taken but unpaid August 2019 and again in August 2020.

154. I have found, as discussed above, that the claimant was not permitted to take his full entitlement to paid annual leave, but that he took 23 days each year of paid leave.

155. Thus in August 2019 the claimant was required to take one week of unpaid leave in circumstances where it should have been paid. His evidence was that in August 2020 he requested two weeks' leave for November 2020 and was informed that only one week of that leave would be paid (the other would be unpaid). His employment terminated before the leave was taken.

156. This claim was lodged in October 2020. In seeking to show that this claim was not out of time, Mr McGuire argued that this was a series of deductions, but did not seem entirely convinced of his argument. He argued in any event that it was not reasonably practicable for a claim to be submitted within the three month time limit and that the Tribunal should exercise its discretion to hear the claim out of time on the basis of the claimant's evidence that he was not aware at the time that a claim could be made for such matters.

157. I could not conclude that a deduction in August 2019 followed by one in August 2020 could be considered to be a series of deductions. Although there was a lapse of more than three months between these deductions, I came to that conclusion because it seemed to me that there was in fact no deduction in August 2020, the claimant having resigned prior to having taken the additional leave requested (which I have accepted he would have been entitled to as paid leave).

158. Although the evidence was not clear, the claimant did receive holiday pay on termination, apparently for the last year of his employment, calculated by Mr Shaw, and apparently on the basis of an entitlement to 28 days leave. It was not however clear where Mr Shaw got his information to calculate holiday pay on termination.

159. So I take the view that while there was an unlawful deduction in August 2019, to succeed under section 13 ERA, the claimant should have lodged a claim within three months of that date, in terms of section 23(2) ERA, so that such a claim is out of time, because the claim was not lodged until October 2020.

160. Mr McGuire argued that I should find that it was not reasonably practicable to lodge a claim in time, but I found little or no evidence to support that, beyond that the claimant was not aware of his rights. Since the next year he was able to take advice about his rights, not least from his accountant, I could not conclude that any ignorance of his rights was reasonable in the circumstances. This claim under section 13 must also be dismissed.

Holiday pay claims under Regulation 30 WTR

161. Mr McGuire relied on regulation 30 WTR to claim both unpaid leave for 2019; and accrued but untaken leave on termination, in terms of regulation 14 WTR.

162. With regard to the latter, the claimant claims for 61 days paid holiday accrued over the course of his employment, based on having been given only 23 days paid holiday throughout.

163. The claimant relies on *King v Sash Windows* C-214/16 [2018] IRLR 142 which is a decision of the CJEU which established that where an employer prevented an employee from taking paid annual leave in one leave year, the untaken leave

must carry over to the next leave year. Mr McGuire submitted that there was sufficient evidence for a finding to be made that throughout the course of his employment the claimant was prevented from taking his full paid leave to which he was entitled, and that the claimant is entitled to payment for the full amount.

164. The claimant also relied on *Pimlico No.2* in respect of his claim under the WTR which he submitted reflected the decision of the Court of Justice of the European Union in *Sash Windows* at paragraphs 33 to 40, which he argued puts beyond doubt that such a claim can be made.

165. Mr McGuire relied in particular on the judgment of LJ Simler, who characterises this type of claim as a "termination claim" [25]. The Court of Appeal confirmed that, on termination of employment, a worker could bring a claim for accrued but untaken holiday throughout the course of his employment.

166. To support his claim for payment for the unpaid holidays taken in August 2019, he relied on the fact that the Court of Appeal also held that a 'termination claim' (that is a claim under regulations 14 and 30 WTR on the termination of employment) could be brought in relation to annual leave that was taken but was unpaid (or underpaid) throughout the course of a worker's employment. This he submitted is confirmed by Simler LJ when she states:

"Accordingly, I can see no principled basis in the CJEU's judgment in King (or the subsequent cases) for treating a worker who takes unpaid leave differently from the worker who takes less than the full leave to which he is entitled, in circumstances where both are unable to exercise the right to paid annual leave because of the employer's refusal to recognise the right and remunerate annual leave" [86].

167. I noted from that the decision of the Court of Appeal in *Pimlico No.2* that the facts were similar to this case to the extent that the claimant in that case took no steps to invoke his right to payment for annual leave until after his contract was terminated, but claimed the right throughout his engagement.

168. I also noted that LJ Simler stated at [87] that, "whatever the position might be in other cases (for example when a worker is paid in part for annual leave or is

underpaid), a worker can only carry over and accumulate a claim for payment in lieu on termination when the worker is prevented from exercising the right to paid annual leave, and does not take some or all of the leave entitlement, or takes unpaid leave, for reasons beyond his control, because the employer refuses to recognise the right and to remunerate annual leave. ….the three-month time limit for making a claim, which runs from the termination of employment, applies….. Provided a claim for payment in respect of the breach of these rights is made within a period of three months beginning with the date of termination, it will be in time". The judgment included an appendix with proposed rewording of regulation 30 to allow for this.

169. I accept the claimant's evidence that he knew that he would not be permitted to take an additional week of paid leave. I accept that the claimant was prevented, or at least not encouraged as he ought to have been, to take an additional five days of leave up to 28 days each year. The fact that there is evidence in this case, in regard to requests in 2019 and 2020, supports the claimant's assertion that he would not have been permitted to take an additional week of paid leave to which he was entitled.

170. I accept that the WTR, read in line with *Pimlico No.2*, allow for all leave to which he was entitled, but which was untaken, back to 2007, to be carried forward. The leave which was untaken because it would have been unpaid totals 61 days, which is 12.2 weeks. At £320 net per week, this amounts to a total of £3,904, which sum I find is due to be paid to the claimant.

171. I also accept that, relying on the dicta of LJ Simler above, the claimant was entitled under the WTR (in contrast with section 13 ERA which she addressed elsewhere in obiter remarks) to claim for the leave taken but unpaid in August 2019. The claimant is therefore due to be paid an additional £320 in respect of unpaid holiday pay, giving a total sum due under the WTR of £4,224.

Breach of section 1 ERA

172. This breach was conceded. Mr Foster argued that the "damage" was "minimal", and that I should make an award the lower end of the discretionary scale.

173. Mr McGuire argued that the maximum four weeks' pay should be awarded, given the claimant's length of service with the respondent.

174. I take the view that in all the circumstance of this case that it is just and equitable, given the claimant's length of service, and the complete failure in this regard, to award four weeks' pay in terms of section 38(2) of the Employment Act 2002, that is (net) £1,280.

Employment Judge: **M Robison**
Date of Judgment: **17 October 2022**
Entered in register: **18 October 2022**
and copied to parties