



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104636/2022**

5

**Final Hearing in person held in Glasgow on 20, 21 and 28 June 2023**

**Employment Judge Ian McPherson**

10

**Mrs Karen Allan**

**Claimant**

**Reface Scotland Limited**

**Respondents**

15

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The reserved judgment of the Employment Tribunal, having heard the evidence led by the claimant and respondents at the 3-day Final Hearing in person, and having then reserved judgment to be given later, and having resumed consideration of the case, and thereafter having, in private deliberation in chambers, considered the evidence led at the Final Hearing, and the written closing submissions received from both parties' representatives on 29 June 2023, is as follows:

- (1) The Tribunal finds the claimant's complaint of unfair, constructive dismissal by the respondents, and alleged breach of contract by the respondents' failure to pay her notice pay, to both be not well-founded, as the claimant voluntarily resigned from her employment, on 27 May 2022, her resignation being accepted by the respondents on 30 May 2022, and so she was not dismissed by the respondents, and so she had no entitlement to notice pay. Accordingly, those complaints against the respondents are dismissed by the Tribunal.
- (2) Further, the Tribunal finds the claimant's complaint against the respondents that she was not paid her outstanding holiday pay accrued to date of termination of employment to be established, and the respondents are

ordered to pay to the claimant the sum of **Five Pounds and Eighty Pence (£5.80)**.

- 5 (3) Finally, the Tribunal finds the claimant's other complaint against the respondents to be not well-founded, as the respondents did issue her with a written statement of employment particulars. Accordingly, that complaint against the respondents is dismissed by the Tribunal.

## REASONS

### Introduction

- 10 1. This case first called before me as an Employment Judge sitting alone on the morning of Tuesday, 20 June 2023, for what was then listed as a 2-day Final Hearing in person on 20 and 21 June 2023, previously intimated to both parties' representatives by the Tribunal, by Notice of Final Hearing dated 25 April 2023. It was listed for full disposal, including remedy, if appropriate
- 15 2. The ET1 claim form in this case was presented to the Tribunal on 23 August 2022, following ACAS early conciliation between 1 and 29 June 2023. The claimant complained of unfair dismissal, with a claim for a redundancy payment, and she further stated that she was owed holiday pay, all said to be arising from termination of her employment on 30 May 2022. In the event of success with her claim, she sought an award of compensation only from the respondents.
- 20 3. In section 8.2 of her ET1 claim form, the claimant set out the background and details of her claim as follows:
- 25 *"I was feeling unwell on Friday 27th of May. I went to my place of work at No5a interiors, 5a Alleysbank Road.G73 1LX (Owned by Reface Scotland Ltd) at 12.30pm (prior to my start time at 1pm) and informed my work colleague that I was unwell and would be unable to attend work and told her I would be in touch with an update on my condition. I then handed my keys over as I was a key holder and I knew they would be required. On Monday 30th May 2022 i was due to start work at 11am and at 9.13am I emailed*

Jacqueline Tomlinson (owner) and explained the situation that my doctor had diagnosed stress and issued me with a medical certificate for two weeks and that I would email her a copy of the certificate and that I would post her the original. At 10.27am I received an email with my P45 and a final payment for 11 hours of £147,25 which included holiday pay of 4.5 hours. At no time did I indicate that I wished to terminate my employment either verbally or in writing. I do feel that I have been treated unfairly by my then employer, and therefore I am claiming for Unfair Dismissal, Redundancy / Notice Pay and Holiday Pay.”

- 5
- 10 4. Further, at section 9.2 of her ET1 claim form, the claimant stated that, in seeking an award of compensation from the respondents, she did so on the following basis:

15 *“I was employed by the company for 2 years and 5 months and as I am over 41 years I am entitled to 1.5 weeks wages for every full year worked. My holiday entitlement was 134.4 hours per annum. I had 40 hours holiday from January 1st 2022 until May 30th 2022. I have [sic] unfairly dismissed with no indication, discussions or dismissed [sic] procedures followed.”*

- 20 5. The claim was defended, by ET3 response, lodged on behalf of the respondents, by Mr Ross Milvenan, with Just Employment Law, Glasgow, on 22 September 2022. The defence stated that the claimant’s employment had terminated on 27 May 2022 due to her resignation. It was denied that the claimant had been unfairly dismissed in the manner alleged, or at all, and averred that she had resigned without giving the respondents notice.

- 25 6. It was also stated that the claimant had no entitlement to a redundancy payment, and further denied that the respondents had made any unlawful deduction from the claimant’s wages as alleged, or at all, stating that there was no entitlement to any accrued but untaken annual leave as at the date of termination.

- 30 7. Standard case management orders for the Final Hearing were issued by Employment Judge Wiseman on 29 September 2022, with Tribunal orders

and directions as regards preparation of a Joint Bundle, and lodging a schedule of loss, etc.

8. Before this Final Hearing in front of me, the case had twice before been listed for such a Final Hearing, on 19 and 20 December 2022, then relisted for 14 and 15 March 2023, but on each occasion, the listed Hearing was then cancelled, the first time, on 16 December 2022, because the respondents' representative was ill, and the second time, on 14 March 2023, because the claimant's representative was ill.
9. In the event, the Final Hearing before me did not conclude within the allocated 2 sitting days, on 20 and 21 June 2023, and it had to be continued, part-heard, to a Continued Final Hearing held on Wednesday, 28 June 2023, the earliest mutually convenient date for both parties and the Tribunal, when the evidence concluded, and judgment was reserved pending receipt of parties' written closing submissions.
10. The Tribunal did not hear oral closing submissions from both parties' representatives. Due to the lateness of the hour on that third day, after evidence had closed, and with the agreement of both parties' representatives, it was decided that they should instead each lodge their own written closing submissions with the Tribunal by no later than 4:00pm the following day, Thursday, 29 June 2023.
11. In the interests of justice, and given that neither party was legally represented, it was considered best to give each party's lay representative time to reflect on the whole evidence led over the 3 days, rather than proceed straight to oral closing submissions late that afternoon.
12. On 30 June 2023, I had a short private deliberation, in chambers, when I read both parties' written closing submissions. Due to other judicial business that day, I did not have time to review the whole evidence led over the 3 days, draft findings in fact, and apply the relevant law to those findings, nor to proceed to draft my Judgment and Reasons.

13. Unfortunately, due to a combination of factors, including other judicial business, and annual leave, I was then unable to further consider the case, and conclude drafting this Judgment until fairly recently. Accordingly, in writing up this Judgment, I sincerely apologise to both parties for the consequential delay in issue of this Judgment, and for any anxiety that may have been caused to either party, by the delay occasioned by my inability to comply with the Tribunal administration's target of Judgment within 28 days.

#### **Final Hearing before this Tribunal, and clarification of the issues**

14. When the case first called before me, on Tuesday, 20 June 2023, the claimant was in attendance, represented by her husband, while the respondents were represented by their owner, a director of the company. Ms Tomlinson was accompanied by her partner, Mr Jason Crossan, for support, but not as a witness for the respondents. He was present throughout the Hearing, as an observer.

15. The Tribunal was provided with a Joint Bundle of Documents, comprising 79 pages, which had been lodged for the previously postponed Final Hearing in December 2022. It included a claimant's Schedule of Loss, dated 14 December 2022, seeking a grand total of **£3,545.18** compensation.

16. In the course of this Final Hearing, further documents were added to that Joint Bundle, as pages 49A, and pages 80 to 92, on days 1 and 2, with yet further documents produced as evidence on the continued third day of the Final Hearing on 28 June 2023, added to that Joint Bundle, as pages 93 and 94, for ease of reference.

17. These further additional documents, comprising various PDF documents from Mr Campbell emailed in to Glasgow ET on 26 June 2023 at 06:19, and by Ms Tomlinson on 26 June 2023 at 15:50, were further documents for the claimant and respondents respectively to be lodged and added to the Joint Bundle. The claimant gave some further oral evidence in chief in relation to these additional documents, and she was cross-examined, before Ms Tomlinson then gave her evidence for the respondents.

18. In the course of discussion with the claimant's representative, Mr Campbell, at the start of the Final Hearing, on day 1, about the legal basis for the various heads of complaint brought by the claimant, the claimant's claim for a redundancy payment from the respondents was withdrawn, in terms of **Rule**  
5 **51**, and, on the application of the respondents' representative, Ms Tomlinson, that part of the claim against the respondents was dismissed by the Tribunal under **Rule 52**, unopposed by the claimant's representative.
19. A **Rule 52** judgment dated 22 June 2023 was issued to both parties on 22 June 2023, confirming that the remaining parts of the claim brought by the  
10 claimant against the respondents, complaining of unfair constructive dismissal, failure to pay notice pay and holiday pay, and failure to give written statement of employment particulars, were all unaffected by that part-withdrawal, and those heads of complaint would proceed to the continued third day of the Final Hearing on 28 June 2023.

15 **Findings in Fact**

20. I have not sought to set out every detail of evidence which I heard nor to resolve every difference between the parties, but only those which appear to me to be material. My material findings, relevant to the issues before this Tribunal for judicial determination, based on the balance of probability, are as  
20 set out below, in a way that it is proportionate to the complexity and importance of the relevant issues before the Tribunal.
21. I have taken into account the available information from both parties, as provided to the Tribunal, in the ET1 claim form, ET3 response, and documents produced in the Joint Bundle, the latter including the terms of the  
25 respondents' correspondence with the claimant, and there was no dispute between the parties at this Final Hearing that what was included in the Bundle was a true copy of that correspondence between the parties, as per the terms shown in those copy productions, many of which have been reproduced, as regards material parts, in my findings in fact.

22. While the claimant denied having received the respondents' letter of 30 May 2022 from Jacqueline Tomlinson, as reproduced at pages 54 and 55 of the Joint Bundle, the Tribunal is satisfied by Ms Tomlinson's evidence in chief, that she adhered to under cross-examination, that that particular letter was posted to the claimant, on that date, even if the claimant still insists (as she did at this Final Hearing) that she had never received it. She did accept, however, that she had received the email of 30 May 2022, but never responded to it.
23. On the basis of the sworn evidence heard from both parties before this Tribunal over the course of this 3-day Final Hearing, and the various documents in the Joint Bundle of Documents provided to me, along with additional documentation received and allowed by the Tribunal, the Tribunal has found the following essential facts established:
- (1) The claimant, aged 63 at the date of this Final Hearing, is currently employed, and she has been since 4 July 2022, as a retail jeweller with another employer. She was previously employed by the respondents.
  - (2) The respondents are Reface Scotland Limited, a private limited company. Their business operates specialist services to replace kitchen and bedroom doors and provides bespoke cabinet making.
  - (3) That business operates from premises at 141 Farmeloan Road, Rutherglen, G73 1EE, nearby the claimant's former place of work with the respondents, at 5A Alleysbank Road, Rutherglen, G73 1LX, a short distance away involving a few minutes' walk.
  - (4) In addition to these specialist services, the respondents have an interior store, known as No.5A Interiors, where the claimant worked for the respondents. She was employed by the respondents as a Sales Assistant at No.5A Interiors in Alleysbank Road, Rutherglen. She was a keyholder.

- 5 (5) The claimant worked there with a colleague, Norma McTaggart. Ms McTaggart worked 30 hours per week, over 5 days, with Sundays and Mondays off. She had started maybe a couple of months before the claimant, and she remained in the employment of the respondents as at the date of the Final Hearing.
- (6) Jason Crossan was their line manager in the store, and he reported to Jacqueline Tomlinson, a director of the company, and business owner. Ms Tomlinson operated from the nearby main premises of Reface, at Farmeloan Road, Rutherglen, where her office was located.
- 10 (7) A copy of the claimant's offer of employment, issued by the respondents on 13 December 2019, was produced to this Tribunal at pages 26 and 27 of the Joint Bundle. If accepted, which it was by the claimant, the employment was to start on 6 January 2020.
- 15 (8) No signed copy of the claimant's written acceptance of the offer of employment was produced to the Tribunal by either party, but there was produced, at page 28 of the Joint Bundle, a copy of the claimant's email of 13 December 2019 to Ms Tomlinson confirming that she had read and accepted the offer of employment, and looked forward to joining the company on 6 January 2020.
- 20 (9) The offer letter referred to a post of Showroom and Customer Service Assistant. Notwithstanding that stated job title, the respondents, in their ET3 response, at section 4.3, accepted the claimant's description of her job title, as per her ET1 claim form, at section 5.2, as Sales Assistant, being correct.
- 25 (10) While, in her ET1 claim form, at section 5.1, the claimant stated that her employment with the respondents started on 5 January 2020, the respondents, in their ET3 response, at section 4.1, stated that it had started on 6 January 2020, and ended on 27 May 2022, when the claimant resigned, and not on 30 May 2022, which date the claimant had inserted in her ET1 claim form, at section 5.1.
- 30



- 5 (11) In terms of that offer letter, the claimant's normal hours of work were to be 24 hours per week, on days and times that would be notified to her in advance, including weekends. She was to be paid at the rate of £9.50 per hour, producing gross weekly pay of £228. Further, she was to be entitled to 5.6 weeks' holiday per annum, with the company's holiday year running from 1 January to 31 December inclusive.
- (12) The claimant was employed from 6 January 2020 until her employment terminated on 27 May 2022 due to her resignation from the respondents' employment.
- 10 (13) The offer letter stated that : *"Your employment with the Company would be on the terms set out in your contract of employment, a copy of which will be sent to you in due course."*
- (14) In her evidence to this Tribunal, and in her closing submissions, the claimant stated that she never received a written statement of employment particulars from the respondents, and that the respondents were in breach of duty by their failure to do so.
- 15 (15) The respondents produced to the Tribunal, at pages 29 to 40 of the Joint Bundle, a 12-page document, entitled "**Contract of Employment**", which they say was issued to the claimant by Ms Tomlinson, for and on behalf of the respondents, on 13 January 2020.
- 20 (16) It contains a statement of the applicable terms of the claimant's employment as required by Section 1 of the Employment Rights Act 1996, consistent with the offer of employment letter, but providing, in terms of annual leave, that the annual entitlement of 5.6 weeks was also expressed as 134.5 hours holiday per year.
- 25 (17) Following a probationary period of 3 months, it stated that the prior written notice required from the claimant to terminate her employment with the respondents would be one month.

(18) The respondents also produced to the Tribunal, at pages 41 to 44 of the Joint Bundle, a 4-page document, entitled “**Furlough Leave Agreement**”, which was issued to the claimant by Ms Tomlinson, for and on behalf of the respondents, by email, on 1 April 2020.

5 (19) It was an agreement, expressly stated to be a variation to the claimant’s contract of employment, designed to implement and take advantage of the Government’s then Coronavirus Job Retention Scheme.

(20) By email from the claimant to Ms Tomlinson, on 1 April 2020, copy produced to the Tribunal, at page 45 of the Joint Bundle, the claimant  
10 replied to the Furlough Agreement, stating that she had read it and understood its terms and conditions, and that she was happy to accept it. Her email made no reference to not having received any Contract of Employment.

(21) Prior to the first Covid Lockdown in March 2020, and as shown on the  
15 copy rota produced to the Tribunal by the claimant, and shown at page 73 of the Joint Bundle, the claimant had worked on the following basis:

Week 1

Mon: 10-4.00

Tues: 10- 5.00

20 Wed: Off

Thurs: 10- 5.00

Fri: Off

Sat: Off

Sun: 12 – 4.00

25 Week 2

Mon: 11-4.00

Tues: 11- 4.00

Wed: Off

Thurs: 10- 5.00

Fri: Off

5 Sat: 10- 5.00

Sun: Off

Week 3

Mon: 10-5.00

Tues: Off

10 Wed: Off

Thurs: 10- 5.00

Fri: 11 – 5.00

Sat: Off

Sun: 12 – 4.00

15 Week 4

Mon: 11-4.00

Tues: 11- 5.00

Wed: Off

Thurs: Off

20 Fri: 11- 5.00

Sat: 10- 5.00

Sun: Off

(22) After that first Lockdown, and as per the copy rota produced to the Tribunal by the claimant, and shown at page 73 of the Joint Bundle, that prior to Lockdown rota changed to the following basis, every week:

Mon: 11-5.00

5           Tues: Off

Wed: Off

Thurs: 01- 5.00

Fri: 01- 5.00

Sat: 12- 5.00

10           Sun: 12 -5.00

(23) Thereafter, in April 2021, the claimant requested to vary her working days, and on 23 April 2021, she received a text message from the respondents' Jason Crossan, as per the copy produced to the Tribunal, and shown at page 87 of the Joint Bundle, stating as follows:

15           "*Karen*

*I refer to your request to vary your working days.*

*At this present time we are all working to get the business back up and running after being closed for the majority of 2020.*

20           *I have tried to accommodate your requests without it affecting any other personnel and the business, whilst ensuring you have 24 hours.*

*Therefore the temporary working pattern for the next four weeks from 26<sup>th</sup> April is as follows.*

*Monday 11am – 5pm*

*Tuesday Off*

25           *Wednesday Off*

*Thursday 1pm – 5pm*

*Friday 1pm – 5 pm*

*Saturday 12pm – 5pm*

*Sunday 12pm – 5pm*

5 (24) In her evidence to the Tribunal, the claimant stated that this change  
meant that she was now working an extra 47 days per year for the same  
hours, and doing 5 days per week, rather than 4 as before, which meant  
she never got time to spend with her grandchildren (who were at school  
during the week) and family, including going to church with her aunt on  
10 a Sunday.

(25) After the second Covid lockdown, the claimant stated that she had  
Tuesdays and Wednesdays off, but she worked every Saturday,  
Sunday, and Monday (including bank holidays), on occasion on her own  
at weekends, where the No5A Interior premises are in a small industrial  
15 estate, where the respondents' store was the only premises open at  
weekends.

(26) The claimant stated that she complained about this revised rota on a  
few occasions to Jason Crossan, and he would say that he would speak  
with Jacqueline Tomlinson, and she further stated that she raised it a  
20 couple of times directly with Ms Tomlinson, but the claimant never put it  
in writing to her. Nonetheless, the claimant continued to work to that rota  
pattern.

(27) On 12 May 2022, the claimant made a verbal request to the  
respondents' Jason Crossan to no longer work on a Sunday as she was  
25 contracted to do. She wished to swap her hours with a colleague,  
Norma McTaggart, to avoid working on Sunday. On 16 May 2022,  
during a telephone call, when Ms Tomlinson phoned the store, the  
claimant asked Ms Tomlinson to consider a change in the rota as she  
really needed family time.

- 5 (28) There was a further telephone conversation, on 20 May 2022, where the respondents' director and business owner, Jacqueline Tomlinson, advised the claimant that a decision could not be made immediately due to the adverse effect this would have on the business and that the issue would be considered further following a period of staff annual leave.
- (29) It was also explained to the claimant that the business would have difficulty recruiting another employee to work a 5-hour shift on a Sunday only. The claimant was asked to make the request in writing.
- 10 (30) The claimant sent an email at 08:41 on Friday, 27 May 2022 to Jacqueline Tomlinson, at the respondents' Accounts email address, rather than her direct email, with subject heading "**reduced hours**". It referred to her previous conversation with Jason Crossan on May 12<sup>th</sup>, and with Ms Tomlinson on May 16<sup>th</sup> and 20<sup>th</sup> with regards to dropping her Sunday shifts, and nothing having been put in place.
- 15 (31) In that email of 27 May 2022, the claimant therefore informed Ms Tomlinson that she would no longer available to work on any future Sundays commencing May 29<sup>th</sup> . A copy of the claimant's email was produced to this Tribunal at page 47 of the Joint Bundle.
- 20 (32) On the same date, Jacqueline Tomlinson replied to the claimant by email, sent at 09:34, confirming that the claimant's email of 27<sup>th</sup> May was the first received since she had been asked to put her request to change her working pattern in writing.
- 25 (33) Ms Tomlinson further stated that the respondents would take advice and consider the claimant's request, but that they could not make an immediate decision due to the effect this would have on the business. A copy of her email reply to the claimant was produced to this Tribunal at page 48 of the Joint Bundle.
- (34) Ms Tomlinson's reply email of 27 May 2022 to the claimant further stated that the respondents would not be able to recruit an additional member

of staff for 5 hours only who could be a key holder with immediate effect, and that no changes would be made until all personnel had completed their annual leave up to and including week commencing 17 June 2022. No specific review date, or decision date, was set and agreed between the parties.

5

(35) Due to the short notice detailed in the claimant's email, that email reply from Ms Tomlinson also advised that the respondents could not accommodate the request in the short term as they did not have any cover for the claimant's work on Sunday 29 May 2022. The claimant was offered the opportunity to take annual leave for Thursday 2<sup>nd</sup> June 2022 for the Queen's Jubilee and the following Sunday (5<sup>th</sup> June) as a solution, and she was asked to confirm.

10

(36) On Friday, 27 May 2022, at or around 12:50pm, the claimant attended at the respondents' premises at No.5A Interiors, where she was due to start work at 1.00pm, and she returned her keys to her colleague Norma McTaggart, whom she informed that she would not be working for the respondents any further and handed over her keys to the premises.

15

(37) Norma McTaggart called Jacqueline Tomlinson to advise her of this fact, and Jacqueline Tomlinson tried to call the claimant to discuss further but the claimant did not answer, nor return the call. Further attempts to contact the claimant by phone were met with no response. No written letter of resignation was given by the claimant to the respondents.

20

(38) The claimant emailed Jacqueline Tomlinson at 09:13am on Monday, 30 May 2022, at the respondents' Accounts email address, with a message entitled "***Doctors certificate***". A copy of her email was produced to the Tribunal at page 80 of the Joint Bundle. It was in the following terms:

25

*"Morning Jacqueline*

*I want to inform you that I have been diagnosed with a stress related illness and I will be unable to attend work. My doctor has issued me with a sickness certificate for two weeks, I will e-mail this to you today and send the original certificate by Royal Mail, signed for*

5 *Regards*

*Karen”*

10 (39) Ms Tomlinson, in her evidence to this Tribunal, stated that she did not see this email from the claimant at that time, as it had been sent to Accounts, and not her direct email. No sickness certificate from the claimant’s doctor was subsequently emailed to Ms Tomlinson, nor received by her or the respondents via Royal Mail, or otherwise, until 3 fit notes were provided by the claimant’s representative when documents for the Joint Bundle for this Final Hearing were first intimated in autumn 2022.

15 (40) On Monday, 30 May 2022, Jacqueline Tomlinson acknowledged the claimant’s resignation by email sent to the claimant, at 10:27, and confirmed the arrangements for her final pay. A copy of her email was produced to this Tribunal at page 49 of the Joint Bundle. It was written in the following terms:

20 *“Dear Karen*

*I refer to your visit on Friday to advise you had made the decision not to return to work and to drop off the keys.*

*Your final pay has been calculated inclusive of 4.5 hours of annual leave, the pay slip has been sent to you today.*

25 *Please find attached your P45 for your records.*

*We would like to take this opportunity to thank you for your contribution to us and wish you every success for the future.”*



5 (41) A copy of the claimant's P45 was produced to the Tribunal as an additional document at page 49A of the Joint Bundle. Dated 30 May 2022, it shows 26 May 2022 as the claimant's leaving date, that date having been her last working day in attendance at work for the respondents.

10 (42) The claimant responded by email on the same date, Monday, 30 May 2022, sent at 14:24, to the respondents' Accounts email address, not to Ms Tomlinson directly, subject heading "**unfair dismissal**", stating that she had not resigned and she had been unfairly dismissed whilst she was ill. She sought a redundancy payment from the respondents.

(43) A copy of the claimant's email was produced to this Tribunal at page 50 of the Joint Bundle, and a further copy reproduced at page 52. It was written in the following terms:

*"Dear Jacqueline*

15 *In reply to your e-mail sent May 30th 2022 I must take issue with your interpretation of the events of my visit to hand in keys at No 5 due to my health issues. At no time did I inform anyone that I was leaving the company. Now that you have decided to terminate my employment unfairly, whilst my doctor has deemed me unfit for work, I would like to*  
20 *inform you that I am entitled to 2 weeks full pay redundancy, which i fully expect you to honour."*

(44) No request was made by the claimant to clear up any confusion regarding her intention to resign, nor was there any request from her to be re-instated.

25 (45) Jacqueline Tomlinson then set out the respondents' position in a further email of 30 May 2022, sent to the claimant at 15:11, subject heading "**Resignation**", to the effect that the claimant had resigned from her employment on 27 May 2022, she had not attended at work on that or the following two days and she had not advised that she was ill. A copy

of Ms Tomlinson's email was produced to this Tribunal at pages 51 and 52 of the Joint Bundle.

(46) In that further email to the claimant, Ms Tomlinson stated as follows:

*"Dear Karen*

5 *I am in receipt of your e-mail below and note your comments therein.*

*I would like to highlight that we have not under any circumstances dismissed or made you redundant, you voluntarily left your employment on Friday 27th May 2022 with your last day of work being 26th May at 5pm.*

10 *There seems to have been some form of misunderstanding and will be grateful if you could clarify the following please to allow us to investigate further.*

***Friday 27th May 2022 8.41am***

15 *We received an e-mail from you at 8.41am. I have checked this e-mail and there is no mention of sickness / illness or health issues or to say you would not be in attendance for work on this date.*

***Friday 27th May 2022 e-mail 09:34am***

20 *We replied to your e-mail confirming receipt of your e-mail and acknowledged the conversations we had previously and thanked you for your e-mail and arranged annual leave for week commencing 30th May 2022 which was open to your acceptance if this suited.*

*We did not receive a reply to our e-mail or an acceptance of the annual leave dates.*

***Friday 27th May 2023 [sic] 12:50pm***

25 *You did not attend work and only arrived to hand in the keys you had and advised you would not be back at work.*

*There was no notification of absence received for this day you did not attend work or notify of sickness or health issues.*

***Saturday 28th May 2022***

5 *You did not attend work or provide any notification of absence or sickness or health issues.*

***Sunday 29th May 2022***

*You did not attend work or provide any notification of absence or sickness or health issues.*

***Monday 30th May 2022***

10 *You did not attend work or provide any notification of absence or sickness or health issues.*

*At no time during the period Friday 27<sup>th</sup> - Monday 30th May 2022 have we received a doctor's certificate as detailed in your email to confirm you are unfit for work.*

15 *Our salaries were processed this morning as per normal procedure inclusive of your resignation.*

*We will be in contact once we are in receipt of this.*

*Assuring you of our best attention at all times."*

20 (47) Ms Tomlinson's email posed questions to the claimant regarding any confusion so that the respondents could investigate further. The claimant, who acknowledged at this Final Hearing that she had received that email, did not contact the respondents in reply, nor did she, or anybody on her behalf, reply to Ms Tomlinson's email.

25 (48) A hard copy letter was also sent by Royal Mail, posted first class by Ms Tomlinson to the claimant's home address, on the same date, Monday, 30 May 2022. A copy of Ms Tomlinson's letter to the claimant was produced to this Tribunal at pages 54 and 55 of the Joint Bundle.

(49) The terms of that letter of 30 May 2022 were similar to what had been stated in Ms Tomlinson's email of that date to the claimant, sent at 15:11, but further revised to set out the respondents' position.

5 (50) An offer to allow the claimant to retract her resignation was made along with an invitation to meet at a suitable venue for her to discuss the circumstances. The claimant did not contact the respondents in reply, nor did she, or anybody on her behalf, reply to Ms Tomlinson's email.

(51) In that letter of 30 May 2022 to the claimant, Ms Tomlinson stated as follows:

10 *"Dear Karen*

*We are in receipt of your email dated 30<sup>th</sup> May 2022 and note your comments therein, we wanted to write to confirm the timeline of events for the avoidance of doubt.*

15 *We would like to highlight that we have not under any circumstances dismissed or made you redundant, you voluntarily left your employment on Friday 27<sup>th</sup> May 2022 with your last day of work being 26<sup>th</sup> May 2022 at 5pm.*

20 *There seems to have been some misunderstanding and would be grateful if you could clarify the following for please to allow us to investigate further.*

***Friday 27<sup>th</sup> May 2022 8.41am***

*We received an e-mail from you at 8.41am. I have checked this e-mail and there is no mention of sickness / illness or health issues or to say you would not be in attendance for work on this date.*

25 ***Friday 27<sup>th</sup> May 2022 e-mail 09:34am***

*We replied to your e-mail confirming receipt of your e-mail and acknowledged the conversations we had previously and thanked you for*

*your e-mail and arranged annual leave for week commencing 30th May 2022 which was open to your acceptance if this suited.*

*We did not receive a reply to our e-mail or an acceptance of the annual leave dates.*

5 **Friday 27th May 2023 [sic] 12:50pm**

*You did not attend work and only arrived to advise you would not be back at work with immediate effect and left your set of keys. You did not give us an opportunity to speak with you.*

10 *There was no notification of absence received for this day, you did not attend work or notify us of sickness, health matters or any other reason for being absent on this date.*

15 *If you had advised you are going to be absent due to sickness or any other reason we would have asked you to complete a self-certification as your period of sickness for the dates 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> May would have been processed on Monday 30th May when the payments are processed for payment due on Friday 3rd June 2022.*

**Saturday 28th May 2022**

20 *You did not attend work nor did we receive any notification of absence, sickness, health matters or any contact to say you were not attending work.*

*You had left your employment voluntarily with immediate effect on Friday 27th May 2022.*

**Sunday 29th May 2022**

25 *You did not attend work nor did we receive any notification of absence, sickness, health matters or any contact to say you were not attending work.*

*You had left your employment voluntarily with immediate effect on Friday 27th May 2022.*

***Monday 30th May 2022***

5 *You did not attend work nor did we receive any notification of absence, sickness, health matters or any contact to say you were not attending work.*

*You had left your employment voluntarily with immediate effect on Friday 27th May 2022.*

***Doctor's Certificate***

10 *At no time during the period Friday 27<sup>th</sup> - Monday 30th May 2022 have we received a doctor's certificate as detailed in your email.*

*Our salaries were processed this morning as per normal procedure inclusive of your resignation.*

15 *It is with disappointment that you have suggested in your e-mail we terminated your employment, this is not what happened.*

*We fully understand but you may have had a change of heart over the weekend and would like to retract your resignation.*

20 *We would be happy to meet with you this week to discuss options, this can be arranged out of the store, and in the office or out with the office if it is your preference or over the telephone.*

*We look forward to hearing from you.*

*Assuring you of our best attention at all times."*

25 (52) At this Final Hearing, the claimant stated that she had not received that letter of 30 May 2022 posted by Ms Tomlinson. No further contact was received from the claimant, or anybody acting on her behalf, in response to Ms Tomlinson's emails or letter of 30 May 2022.

- (53) The claimant notified ACAS, by way of early conciliation, on 1 June 2023, and ACAS issued their certificate on 29 June 2023. The claimant lodged her ET1 claim form in this case with the Employment Tribunal on 23 August 2022.
- 5 (54) While the claimant obtained a Med 3 fit note (statement of fitness for work) from her GP on 30 May 2022, stating that she was not fit for work, until 12 June 2022, on account of “**Stress at work**”, the claimant did not send that GP fit note to the respondents, at or about that time.
- 10 (55) She obtained further statements from her GP on 13 June and 28 June 2022, again saying that she was not fit for work, until 26 June 2022, and 10 July 2022, respectively, again on account of “**Stress at work**”, but the claimant did not send either of those two further GP fit notes to the respondents, at or about those times either.
- 15 (56) A copy of these 3 GP fit notes were produced to this Tribunal at pages 56 to 58 of the Joint Bundle. These statements of fitness for work were only produced to the respondents during the course of these Tribunal proceedings, in autumn 2022, when included in the Joint Bundle for the earlier, postponed Final Hearing.
- 20 (57) The claimant’s final pay was paid by the respondents on 3 June 2022. It included holiday pay. A copy of her final payslip was produced to this Tribunal at page 92 of the Joint Bundle. She received net pay of **£147.25**, being £104.50 for 11 hours at £9.50, and 4.5 hours holiday pay, being £42.75.
- 25 (58) The respondents prepared, and produced to the Tribunal, as page 91 of the Joint Bundle, a document entitled “**Final Pay – PAYE File Notes**”. It was in the following terms:

**Week commencing 23rd May 2022**

**Hours worked**

	Monday 23rd May 2022	6 hours
	Tuesday 24th May 2022	Off
	Wednesday 25th March 2022	Off
5	Thursday 26th March 2022	4 hours
	Friday 27th March 2022	Karen left
	Saturday 28th March 2022	N/a
	Sunday 29th March 2022	N/a
	<b>Total Hours Due</b>	<b>10 hours</b>

10 **Annual Leave Taken**

	Saturday 1st January 2022	5 hours
	Sunday 2nd January 2022	5 hours
	Monday 3rd January 2022	6 hours
	<b>Total</b>	<b>16 hours</b>

15

	Thursday 5th May 2022	4 hours
	Friday 6th May 2022	4 hours
	Saturday 7th May 2022	5 hours
	Sunday 8th May 2022	5 hours

20

	Monday 9th May 2022	6 hours
	<b>Total</b>	<b>24 hours</b>
	<b>Annual Leave Accrued</b>	<b>53.8 hours</b>



<b>Annual Leave Taken</b>	<b>40 hours</b>
<b>Final Pay Annual Leave</b>	<b>4.5 hours</b>
<b>Total Paid</b>	<b>44.5 hours</b>
<b>This leaves 9.3 hours @ £9.50 = £88.35 due</b>	
<b>Less overpayment from 2020</b>	<b>= £73.05</b>
<b>Balance</b>	<b>£15.30 to pay</b>
<b>Paid 11 hours on final pay £9.50</b>	
<b>Balance due</b>	<b>£5.80 outstanding</b>

5

10

15

20

25

(59) The Tribunal notes that the dates shown as 25<sup>th</sup> to 29<sup>th</sup> **March** 2022 are an obvious typographical error for 25<sup>th</sup> to 29<sup>th</sup> **May** 2022.

(60) It was explained to the Tribunal that the 2020 overpayment to the claimant arose in the following circumstances; her payslip on 17 January 2020 (copy produced at page 46 of the Joint Bundle, and reproduced at page 85) paid her for 24 hours at £12.50 per hour, producing gross pay of £300, which after deductions for PAYE tax and NI, produced a net pay of £293.55.

(61) Her rate of pay, at that time, was however £9.50 per hour, as shown in the copy of her payslip on 24 January 2020 (copy produced at page 86 of the Joint Bundle) which paid her for 24 hours at £9.50 per hour, producing gross pay of £228, which after deductions for PAYE tax and NI, produced a net pay of £220.50.

(62) The respondents produced, at page 84 of the Joint Bundle, a copy letter dated 24 January 2020 from Ms Tomlinson to the claimant, entitled "**Overpayment Week 41 – Week Commencing 6<sup>th</sup> January 2020**", which was written in the following terms:

*“Dear Karen*

*Overpayment Week 41 – Week Commencing 6th January 2020*

*Further to our meeting with regard to your first pay for week commencing 6<sup>th</sup> January 2020 and our error on this processing, we confirm the overpayment of £73.05 in total.*

5

*It is your wish not to repeat it in that one some, but that's your preference is to repay in instalments over a period of time by 5th April 2020.*

*If the payment is not received it will be deducted from your final salary.*

*Please accept other apologies for the initial error and for your understanding on this matter.”*

10

(63) At this Final Hearing, the claimant denied ever having received such a letter from Ms Tomlinson on or around 24 January 2020, or at all, until it was lodged as an additional document to add into the Joint Bundle for use at this Final Hearing on 21 June 2023, following the claimant's husband emailing Ms Tomlinson at 07:40am on the morning of Wednesday, 21 June 2023, further to the emails she had sent him about the claimant's holiday pay deficit, and asking about this alleged overpayment.

15

(64) At pages 59 and 60 of the Joint Bundle, the Tribunal was provided with a document, prepared on 16 November 2022 by the claimant's husband, Hugh Campbell, entitled “**Holidays taken 2022**”, but actually showing holidays taken by the claimant in calendar year **2021**, and described in the Bundle index as “**Claimant's note of annual leave**”. It showed 101 hours taken, out of 134.4 due, leaving a holiday deficit of 33.4 hours.

20

25

(65) The Tribunal was also provided, at pages 61 to 76 of the Joint Bundle, with various claimant's email correspondence with Ms Tomlinson of the

respondents, on 7 April 2021, and 5 and 12 November 2021, regarding her annual leave entitlement.

5 (66) In respect of the claimant's annual leave 2021, the respondents produced an additional document provided to the Tribunal as page 89 of the Joint Bundle, along with a copy of their employee record for the claimant showing her holidays taken in calendar year 2021, as page 90 of the Joint Bundle.

10 (67) This document for the respondent cross referred to an email from Ms Tomlinson to the claimant, on 5 November 2021, produced at page 63 of the Joint Bundle, confirming that she had, up to 5 November 2021, taken 111 hours out of her annual entitlement of 134.50 hours, and booked a further 22 hours, leaving her with 1.5 hours to take before 31<sup>st</sup> December 2021.

15 (68) In her evidence to this Tribunal, and as per her Schedule of Loss, the claimant stated that she received statutory sick pay from the DWP after her employment with the respondents ended, totalling £496.75, being 5 weeks at £99.35 per week. No vouching of this sum was produced to the Tribunal.

20 (69) However, as part of the additional documents for the claimant, allowed in by the Tribunal on day 3 (28 June 2023), there was produced a copy letter dated 5 July 2022 from Jobcentre Plus to the claimant stating that for the period up to 3 July 2022, she had been paid a total of £341.00 by way of Employment and Support Allowance.

25 (70) There had been lodged, on 21 June 2023, as an additional document from the claimant, and added into the Joint Bundle as pages 81 and 82, a print out from her Bank of Scotland account showing her receipt of Employment Support Allowance from the DWP, totalling £341, by payments of £99.00 on 6 July 2022; £154.00 on 24 June 2022, and £88.00 on 15 June 2022.

5 (71) The claimant secured new employment with another employer as of 4 July 2022 and, in this claim to the Tribunal, she has not sought compensation from the respondents for any ongoing future loss. The Tribunal was informed that in her new employment, 25 hours per week, she is paid £10 per hour, producing £250 gross per week.

(72) The ET1 claim form in this case was presented to the Tribunal on 23 August 2022. The claimant had, in fact, submitted an earlier claim to the Tribunal, accepted under case number **4104605/2022**, and presented by her to the Tribunal on 19 August 2022.

10 (73) That “**duplicate claim**”, having been withdrawn by her, was dismissed by the Tribunal under **Rule 52**, by judgment from Employment Judge McManus dated 3 November 2022, as sent to parties on 7 November 2022, as per copy produced to this Tribunal at page 25 of the Joint Bundle.

15 (74) Although that copy document bears to have been sent on “**07 OCT 2022**”, while signed by the Judge on 3 November 2022, the covering letter from the Tribunal sent to both parties shows it was sent on 7 November 2022.

20 (75) On 19 October 2022, in an email submitted to Glasgow ET in her duplicate claim, 4104605/2022, presented on 19 August 2022, the claimant’s representative intimated a schedule of loss for the claimant, as follows:

*Karen Allan SCHEDULE OF LOSS at 18th October 2022*

*UNFAIR DISMISSAL*

25 *BASIC AWARD*

*Date I was dismissed: 30.05.2022*

*Age when dismissed: 62*

*Number of years I worked when dismissed: 2 years*

*Gross weeks pay : £228. 00*

*Net weeks pay £222. 97*

*Redundancy entitlement 1.5 weeks pay for each year worked*

*3 x weeks at £222. 97 = £668.91*

5 *Total Basic Award : £668.91*

*COMPENSATORY AWARD*

*Past losses*

*Loss of earnings*

*Net pay : £227.97 per week*

10 *Length of time out of work – 5 weeks*

*Total lost pay : £1, 114.85*

*Less income received*

*Sickness benefit.      £242.00*

15 *LOSS OF STATUTORY RIGHTS*

*I will have to work for two years to be protected against unfair dismissal  
I think it would be appropriate for the tribunal to award £500 to reflect  
my statutory rights.*

*UPLIFT FOR FAILURE TO FOLLOW THE ACAS CODE.*

20 *My employer did not follow the ACAS code of practice so I think the  
tribunal should increase the compensatory award by 10%*

*WRONGFUL DISMISSAL.*

*Notice Pay*

*I will only seek an award under this heading if no compensatory award is made for loss of earnings for the same period.*

*My notice entitlement : 3 week net pay : £222. 97 x 3 = £668. 91*

#### *HOLIDAY PAY*

5 *My leave year 1st January to 31st December*

*Amount of days per annum 28 days*

*Amount of hours per annum 134.4 hours*

*Holidays accrued at 30/05/22 = 55.3 hours*

*Holidays taken at 30/05/22 = 44.5 hours*

10 *Holiday pay owed : 10.2 hours = £96.90*

#### *AWARD FOR FAILURE TO PROVIDE A CONTRACT OF PROCEDURES AND CONDITIONS OF EMPLOYMENT.*

*I was not given a full contract of employment.*

15 *The document I was asked to sign was for acceptance of an offer of employment. I did not receive a formal contract of employment. I think the tribunal should award me an additional 4 weeks statutory pay.*

*TOTAL: 4 weeks at £222. 97 = £891.88*

20 (76) In her Schedule of Loss in the present claim, 4104636/2022, as reproduced to the Tribunal, at pages 78 and 79 of the Joint Bundle used at this Final Hearing, the claimant's position was set out as follows:

#### **Key Facts**

*Commencement date*                      06 January 2020

*Dismissal date*                            30 May 2022

*Date of birth*                                23 May 1960 (age 62)

Weekly pay (gross) £228

Weekly pay (net) £182.40

Number of hours per week 24

Date new employment commenced 04 July 2022 (no on-going loss)

5

**Head of Loss**

**Unfair dismissal basic award**

1.5 x 2 x £228 **£684**

**Compensatory award**

**Future loss**

10

5 x £182.40 **£912**

**Notice pay**

2 x £182.40 **£364.80**

**Holiday pay**

10.2 hours **£96.90**

15

**Loss of Statutory Rights £500**

**Failure to provide a Statement of Terms and Conditions**

4 x £228 **£912**

**Total Financial loss £2785.70**

**Deductions**

20

**Deductions for receipt of Statutory Sick Pay (£496.75)**

5 x £99.35

**Total Compensatory Award £2288.95**

***Uplift due to failure to follow ACAS Code (25%)*** £572.23

***Grand Total*** £3545.18

### **Tribunal's assessment of the evidence led at the Final Hearing**

24. In considering the case before the Tribunal, I have had to carefully assess  
5 the evidence heard from the claimant, and Ms Tomlinson, the only two  
witnesses heard by the Tribunal, and to consider the many documents  
produced to the Tribunal in the Joint Bundle and assorted additional  
documents lodged and used at this Final Hearing, insofar as spoken to in  
evidence, which evidence and my assessment I now set out in the following  
10 paragraphs.

25. On the evidence before this Tribunal, I have had to take the evidence as  
parties chose to present it to me, for this is an adversarial process, not  
inquisitorial, and that therefore involves me taking into account, *quantum*  
*valeat*, that is for as much as it is worth, the evidence led from each of Mrs  
15 Allan, as the claimant, and Ms Tomlinson, as the respondents' one and only  
witness.

26. Ms Tomlinson did not call any other witness, such as Mr Crossan, who clearly  
was available, as he sat in the whole of this public Hearing as an observer,  
Ms Tomlinson having confirmed he was not to be led as a witness for the  
20 respondents, and she not having called Norma McTaggart, the claimant's  
work colleague, to whom the claimant had returned the keys to the  
respondents' premises on her attendance at the work place on Friday, 27  
May 2022.

27. I have seen the paper trail between the parties leading up to and including  
25 the issue of the claimant's P45 to the claimant, as provided in the Joint  
Bundle. I also have the claimant's account, as given by her in oral evidence,  
and I have Ms Tomlinson's account of what she says she was told by Ms  
McTaggart, and about her correspondence with the claimant on 27 and 30  
May 2022.



**Claimant: Mrs Karen Allan**

28. The first witness to be heard by the Tribunal was the claimant. I heard her sworn evidence on days 1 and 2. She was examined in chief by her husband, Mr Campbell, as a lay representative, and she was thereafter cross-examined by Ms Tomlinson, the respondents' representative, before some questions of clarification from the Tribunal, and some brief re-examination of the witness by her husband. In addition, on day 3, she gave some further evidence related to additional documents lodged with the Tribunal.
29. The claimant came across to this Tribunal as a nervous witness, not just due to the formality of the public Hearing at the Tribunal, as an unknown environment, but, more noticeably, she did not give the impression that she was fully conversant with all aspects of her claim before the Tribunal. She tended to look towards her husband to answer certain matters, rather than her own recollection, and she did not come across well as a confident and accurate historian of the background and key events leading up to her claim before this Tribunal.
30. In her evidence in chief, she was critical of the respondents, and raised matters that had not been foreshadowed in her ET1 claim form, and which were not part of her complaints before the Tribunal. While she had complained that she never received a full contract of employment, she further stated that if there was a company handbook, it was never given to her, and never discussed, and she referred to no induction training, no health and safety briefings being carried out, and no fire drills, throughout her employment.
31. On occasion, when opening up the store herself, she stated that lights in the stockroom did not work, and she would have to put the lights on with a wooden pole, standing on a box, or a tall ladder, which she stated did not seem safe to her. She referred to fire exits not being clear, and to a leaking roof, with buckets on the showroom floor for leaking water, and no health and safety procedures to cover this happening. Reference was also made to a

wood burner, in the workshop next door, where they would burn laminate flooring, and that billowing out toxic fumes.

32. When, as presiding Judge, I queried the relevance of this line of evidence to the claim before the Tribunal, Mr Campbell stated that he was trying to establish the type of management by the respondents throughout the claimant's work at No5A. It was not relevant to the issues before me, and the claimant's evidence in this regard I have discounted for that reason. Her allegations were just that, and with no fair, prior notice to the respondents, and no application to amend her case to bring another type of complaint against the respondents.
33. Overall, while I was satisfied that Mrs Allan was doing her best to give the Tribunal a full recollection of events, as best she could remember them, and as she saw things, through her own lens, as to how and why her employment with the respondents had ended, and what monies she felt she was still owed by them, she did not come across to the Tribunal as a credible and reliable witness. As regards her claim for unpaid holiday pay, and generally sums sought in her schedule of loss, she said these calculations had been prepared by her husband, and she had nothing to usefully add.
34. In the course of her evidence in chief, when being asked about seeking changes in the rota, after the same pattern had been operating for about a year and a half, the claimant stated that, in the May 2022 telephone calls with Ms Tomlinson, she felt that she was not willing to change the rota, and that she felt discriminated against, as there was favouritism towards Norma McTaggart, and that it felt personal to the claimant, as she was not Ms Tomlinson's favourite, and she got the impression it was "**no for the sake of no.**"
35. Where there was a conflict between her evidence and the respondents' evidence, as led from Ms Tomlinson, I have preferred Ms Tomlinson's account as being the more likely. It is also supported by contemporary documentation produced to the Tribunal.

36. This conflict in evidence manifested itself in several ways during the course of the 3-days, most particularly in relation to what the claimant and Ms McTaggart may have said to each other on Friday , 27 May 2022, and also related to the respondents' letter of 30 May 2022 posted to the claimant, which the claimant denied ever having received, but which Ms Tomlinson was equally confident that she had posted it to the claimant's home address.
37. As regards the discussion on 27 May 2022, between the claimant and Ms McTaggart, and thereafter any conversation between Ms McTaggart and Ms Tomlinson, no reason for Ms McTaggart's non-attendance as a witness for the respondents was given by Ms Tomlinson, other than her brief comment, at the start of the Final Hearing, that she did not consider it necessary to bring Ms McTaggart along as a witness.
38. It seemed to the Tribunal at that time, and indeed still now, when writing up this Judgment, that the respondents not calling Ms McTaggart was somewhat bewildering. That said, the Tribunal notes and records that the claimant's representative, Mr Campbell, made no case management application to the Tribunal to consider making a Witness Order to compel Ms McTaggart's attendance at this Final Hearing as a relevant and necessary witness.
39. The respondents having decided not to call Ms McTaggart and proceed with Ms Tomlinson as their one and only witness, it was not for this Tribunal, acting on its own initiative, to consider issuing a Witness Order for Ms McTaggart's attendance.
40. Indeed, in writing up this Judgment, the Tribunal notes and records here the judgment of the Court of Appeal in England & Wales in **QX v Secretary of State for the Home Department [2022] EWCA Civ 1541**, where the judgments of Lady Justice Elisabeth Laing, Lord Justice Nugget, and Lord Justice Coulson, issued on 22 November 2022, are a timely reminder that a Court cannot compel a party to call a particular witness whom a party does not wish to call.

41. ***“Party autonomy is paramount”*** in civil litigation, per Lord Justice Coulson, at paragraphs 133 to 135, agreed with by the other judges at paragraphs 128 and 129. In my view, the same principle applies here in the Employment Tribunal by analogy.
- 5 42. That said, the Tribunal was surprised throughout the course of this Final Hearing that not only was Ms McTaggart, as a key individual identified and named by both parties, not led in evidence by the respondents, but that was coupled with a lack of any contemporary documentation disclosed by the respondents about what written record (if any) Ms McTaggart may have been  
10 asked to provide Ms Tomlinson, either at the time, or after the claimant went to ACAS, and subsequently raised these Tribunal proceedings against the respondents.
43. While Ms McTaggart was not led as a witness for the respondents, the Tribunal has had regard to the totality of the evidence made available to it by  
15 both parties at this Final Hearing, where Ms Tomlinson has given evidence on what she says was reported to her by Ms McTaggart, and Mr Campbell, as the claimant’s representative, cross-examined her on that evidence, as Ms Tomlinson had cross-examined the claimant when giving her own recollection of what had happened that day in dialogue with Ms McTaggart.
- 20 44. I have decided that it is not appropriate for this Tribunal to draw an adverse inference from the mere fact that Ms McTaggart was not led as a witness for the respondents, but instead I have required to consider, on balance of probability, whether I believe the claimant’s account, or Ms Tomlinson’s account.
- 25 45. In her evidence in chief, the claimant stated that she was due to start work at 1.00pm, and she went to the shop on Friday, 27 May 2022, to tell Jason Crossan that she felt unwell, but it was only Norma McTaggart who was there. She said that she told Norma that she did not feel well, and gave her the keys, as she knew they’d want them, as her husband had handed them in to the  
30 shop in November 2021 when she was off sick.

46. Further, she said, she would be in touch, and would be contacting her GP, and that Norma would tell Jacqueline Tomlinson that she had handed in the keys as she was unwell. She stated it was not a long conversation, and that she felt tearful, but she did not want to discuss with Norma why she was feeling unwell and stressed. She said that Norma said she would pass the message on to Jacqueline, or Jason.
47. Cross-examined by Ms Tomlinson, the claimant stated that having received her email of 27 May 2022 sent at 09:34 (page 48 of the Joint Bundle) she was “**disgusted**”, Ms Tomlinson’s attitude at the telephone call was “**so negative**”, and she felt that Ms Tomlinson did not want to accommodate her. She spoke of being “**tired of the whole process**”, stressed by it and getting nowhere : “**I didn’t want any more rejection, and was getting weary of it all.**”
48. The claimant stated that she did not go into Ms Tomlinson’s office on 27 May 2022 as she was feeling stressed and did not want to get negativity. She had told Norma she was unwell, and she needed to see her doctor on the Monday morning. She spoke of being stressed and not thinking straight, and denied she had had any calls from the respondents. She said that was not true, and she had no missed calls. She asked why would she get a sick line if she was leaving the company.
49. Asked why she had not replied to Ms Tomlinson’s email of 30 May 2022, if there had been a misunderstanding, the claimant stated that she probably should have replied, but she was not feeling herself at the time, and she did not reply at any future date, as what was to be achieved, as she was no longer an employee of the company, and they had sent her her P45. Similarly, as the P45 had been issued, and her last pay paid to her, she did not send the respondents the medical certificates obtained from her GP, that she had emailed Ms Tomlinson saying she would do so.
50. When Ms Tomlinson gave her evidence in chief, she stated that the claimant turned up at 12:50, on Friday, 27 May 2022, handed the keys in and told

Norma that she was not coming back. Norma called Ms Tomlinson straightaway, and she called the claimant, but her mobile phone was switched off. She said Jason then called the claimant, and again, no response, as her phone was switched off. Later that day, not having heard from the claimant, she said Alan Barr, the other director, called the claimant, but he too got no response.

5

10

51. Further, Ms Tomlinson stated, the claimant didn't turn up on Saturday, nor did she call in to say she was sick, and the same again on the Sunday. Having called ACAS for advice, she stated that the claimant had resigned, and they accepted her resignation, on Monday, 30 May 2022, and sent her her P45. She stated that the respondents "**absolutely did not dismiss Karen, especially with Norma going on holiday for 2 weeks.**" She said that she did not ask Norma for a written note, as she had reported matters verbally, and she was going off on holiday from the Monday, 30 May 2022.

15

52. Under cross-examination by Mr Campbell, Ms Tomlinson said that the claimant had raised no grievances at all while employed by the respondents, until May 2022, to say that she was not happy with the rota, and her request for variation had not been refused, it was to be further considered after 17 June 2022, but the claimant resigned on 27 May 2022.

20

25

53. She spoke of the respondents being "**left high and dry on Friday, Saturday and Sunday**", and that neither the claimant, nor anybody else on her behalf, had contacted them to say she was sick. There was no reply to the respondents' email of 30 May 2022, and Ms Tomlinson suggested that "**something was afoot**", but she did not know what, as it seemed now that it was all a ploy to get to the Tribunal, given the claimant went straight to ACAS on 1 June 2022.

30

54. On balance, and after careful consideration, I have preferred Ms Tomlinson's account, as regards what happened with Ms McTaggart on 27 May 2022, as it has the ring of truth to it, and her subsequent actions, in attempting by email, and letter, to clarify with the claimant her position, lend weight to the fact that

Ms McTaggart had gleaned from the claimant that she was resigning, and not coming back to work.

55. On the respondents' letter of 30 May 2022, I have preferred Ms Tomlinson's evidence, as again it has the ring of truth to it, and in the circumstances pertaining at that time, when the claimant was not engaging in the respondents' attempts to get her to do so, by e-mail, and attempted phone calls, it seems eminently sensible that the employer would have written direct to the claimant.

56. Further, that letter has been referenced by the respondents since their ET3 response was lodged, giving weight to their assertion, which I now accept as fact, that they did indeed write to the claimant on that date, and in those terms, as per the letter produced to the Tribunal at pages 54 and 55 of the Joint Bundle.

#### **Ms Jacqueline Tomlinson: Respondents' Director**

57. The only witness led on behalf of the respondents was Ms Tomlinson. As agreed with both Mr Campbell for the claimant, and Ms Tomlinson for the respondents, Ms Tomlinson's evidence in chief was elicited by questions from the Judge. She was thereafter cross-examined by Mr Campbell, the claimant's representative.

58. Overall, I found Ms Tomlinson to be a plain speaking, straightforward witness, who was polite and business like in her approach to the twin task of being a representative, as well as a witness. Where there was a conflict between her evidence, and that given by the claimant, I have preferred Ms Tomlinson's account, for the reasons already given earlier in these Reasons.

#### **Statement by Yvonne Knox**

59. At page 77 of the Joint Bundle, there was produced to this Tribunal an email of 17 November 2022 from Ms Knox to Hugh Campbell, the claimant's representative, reading as follows:

*“To whom it may concern.*

*I wish to confirm but I am a former employee of Reface Scotland Ltd which has a sister company of No.5 Interiors and has the same director Jacqueline Tomlinson.*

5 *I can confirm that while in employment with this company I never received a letter / e-mail as to the terms and conditions of my employment.*

*My offer and acceptance for my position was conducted by a short e-mail. Any request as to conditions and terms where [sic] only vaguely verbally given.*

10 *To the best of my knowledge any other employee whilst I was in their employment that this subject was talked about confirmed they were in the same situation without a written contract.*

*I was employed by Reface Scotland from 10/12/19 to 26/6/22.”*

15 60. No application was made to the Tribunal by Mr Campbell, on the claimant's behalf, for a Witness Order to be granted to compel Ms Knox's attendance as a witness. Similarly, Ms Tomlinson made no such application for Ms Knox to be called as a witness for the respondents.

20 61. Equally, Ms Tomlinson, having had sight of this email from Ms Knox, since the time that the Joint Bundle was lodged for the previously postponed Final Hearing in December 2022, she took no steps to lodge with the Tribunal any relevant paperwork relating to Ms Knox's written statement of employment particulars (if any).

25 62. In her evidence in chief, on 28 June 2023, Ms Tomlinson stated that Ms Knox was formerly a part-time employee, but she did not work with the claimant, and she said that she did receive a contract of employment, she having checked the paperwork the previous week. No copy documentation was lodged with the Tribunal.



63. This matter was item A in the List of Issues before the Tribunal, reading as follows:

**A. Evidence before the Tribunal:**

5 ***As regards the email of 17 November 2022 from Yvonne Knox, produced at page 77 of the Joint Bundle, what weight (if any) should be given to that email in the absence of Ms Knox not being called as a witness for the claimant, and thus not available for cross-examination, and questions of clarification from the Judge?***

64. In reply, the claimant's position, as set forth in the written closing submissions  
10 made on her behalf, by Mr Campbell, was that it is true that Ms Knox was not called as a witness for the claimant, as with past conversations with her, voicing her concerns that she also did not receive an employment contract, Ms Knox had kindly offered to provide the claimant with an email in support of her Tribunal claim.

15 65. For the respondents, it is stated that the email of 17 November 2022 from Yvonne Knox at page 77 of the Bundle should not be admitted in evidence as Yvonne Knox has not spoken to this email in evidence as she has not appeared as a witness.

66. In the absence of Ms Knox being called as a witness for the claimant, and  
20 open to cross-examination by the respondents' representative, and questions of clarification by the Tribunal, I have given no weight whatsoever to this email statement, and I have drawn no adverse inference against the respondents from the fact that Ms Tomlinson took no steps to lodge with the Tribunal any relevant paperwork relating to Ms Knox's written statement of employment  
25 particulars.

67. Ms Knox is not the claimant in these Tribunal proceedings. In relation to the claimant, who was the subject matter of this Final Hearing, Ms Tomlinson did lodge relevant paperwork, at pages 28 to 45 of the Joint Bundle, which was the subject of evidence, and cross-examination, at this Final Hearing.

**Closing Submissions from Parties**

68. At the close of evidence on day 2, Wednesday 21 June 2023, in continuing the case to a third day, on Thursday, 28 June 2023, to hear the respondents' evidence from Ms Tomlinson, and thereafter to hear parties' closing submissions, the Judge gave oral directions to both parties' representatives as regards further procedure before the Tribunal.
69. The Judge's oral directions were confirmed, in writing, by letter from the Tribunal clerk sent on 22 June 2023. It stated that, as there was no agreed List of Issues adjusted between the parties, as being the factual and legal issues requiring determination by the Tribunal, the Judge had drafted an attached List of Issues, which seemed to him to be those remaining in this case (the redundancy payment claim having been withdrawn by the claimant on day 1, Tuesday, 19 June 2023).
70. If parties had any suggested revisions, they were asked to let the Tribunal by no later than 4:00pm on Monday, 26 June 2023. Further, it was suggested to both parties' lay representatives that they use the List of Issues as a template, and, in their respective closing submissions, they should provide the answers that they each suggest the Tribunal should adopt.
71. The Tribunal received written closing submissions from both parties' representatives, as ordered. Neither party's representative suggested any changes to the List of Issues proposed by the Judge. Both parties' representatives made detailed written submissions, with their proposed answers to the listed issues, which submissions the Tribunal has found to be informative, and helpful, in explaining each party's position. The Tribunal has carefully considered both parties' written submissions.
72. In their respective written closing submissions, parties' representatives have addressed, from their differing perspectives, their proposed answers to each of the listed issues. A full copy of each of both parties' written closing submissions is held on the Tribunal's casefile, and I had access to them, during my private deliberations, in chambers. I deal with salient points from

both parties' closing submissions, in the following sections of these Reasons, under "***Discussion and Deliberation.***"

### **Claimant's Closing Submission**

5 73. For the claimant, Mr Campbell emailed Glasgow ET, with copy to Ms Tomlinson, on Thursday, 29 June 2023 at 14:37, along with a further copy on 30 June 2023 at 13:30, when the Tribunal clerk had requested them again, the original email not having been linked up with the Tribunal's casefile, so it wrongly appeared that there had been no reply, when in fact the claimant's submissions had been intimated within time.

10 74. Mr Campbell's email attached a 7-page PDF of his closing submission, partly typed in a series of emails to himself, and partly handwritten, along with a separate 6-page PDF scan of an annotated version of the Tribunal's list of issues for determination, and the claimant's answers to those listed issues A, B1 to B11, C1 to C3, D1 to D4, E1 to E9, and F1 to F4.

15

### **Respondents' Closing Submission**

75. For the respondents, Ms Tomlinson emailed Glasgow ET, with copy to Mr Campbell, on Thursday, 29 June 2023 at 15:48, attaching her 6-page "***closing statement***" for the respondents. It included her answers to the listed issues for the Tribunal.

20

76. Meantime, I note and record that, in her "***closing statement***", Ms Tomlinson stated as follows:

*"We are a small business of 32 years with two owner/directors.*

*We both work within the business on a daily basis with our personnel and are always available in person or by telephone.*

25

*During the period of Karen's employment I worked 7 days and my colleagues Alan and Jason 6 days per week.*

*We were closed for the majority of 2020, during this period like any other business it was difficult, we had no income as we were not able to visit our customers or them to visit us, we were unable to fulfil any of our installations sourced from the last months of 2019.*

5 *We had to make difficult decisions, if we should close the business or scale it down and make personnel redundant.*

*We have always had a good working relationship with our personnel, collectively we all make it work, we all have our part to contribute to ensuring the products we sell, manufacture and install are to the satisfaction of our customers, our business is based on recommendations.*

10

*Our personnel have always been important to us, we are like an extended family due to how closely we work together each day. We made the decision to personally invest to ensure we were able to keep everyone in their positions with no redundancies and kept in contact during the period we were closed.*

15 *The pandemic changed how we all worked, we all became more aware of how important it was to look after each other whilst at work, and each person had had differing experiences during their period of furlough, we were all happy to have returned to work and have since then continued to support each other and grow together from strength to strength.*

20 *The claimant Karen was also a part of this, we always had a friendly, positive and professional working relationship, we always accommodated any of Karen's wishes, I would expect this is why there were no grievances raised during her period of employment with us.*

*I feel that Karen's evidence did not relate to the bundle, and that her evidence was not reliable and lacked credibility. It was not a true reflection of her time with us.*

25

*There were other claims in her evidence that did not relate to the bundle that I was not prepared for and came as a surprise as this was not how our working relationship was.*

*Karen made claims that she did not receive emails and letters, her evidence lacked creditability and is too convenient to deny receipt of crucial evidence. In particular, I sent an email to Karen and a letter on 30 May 2022 which set out our position and offered to clear up any confusion on her part. Karen advised in her evidence that she denies receiving this key correspondence. In my view that is simply not credible as both went sent to her using the contact details she had provided. This evidence was also provided to Karen by Acas during the conciliation process, the bundle would not have been the first time she had sight of it as given in evidence.*

*There were claims that emails had not been received and in particular with reference to annual leave during furlough, this was later admitted during evidence the email had been received and accepted.*

*We were always supportive of Karen and any of her wishes, in the second request in May 2022 within 12 months of the previous request; we received it verbally on 16th May and in writing on 27th May 2022.*

*At no time did we decline Karen's request, we advised we would need time to discuss with other personnel when they had returned from annual leave and had planned this, it was confirmed in our email of 27th May 2022.*

*We advised Karen that we had taken advice and explained that we had not turned down her request but required time to consider it, we explained that the change would mean we could not deal with customers as well as before due, at the time of the request we were not able to re organise work between other personnel and that the change may mean that we would have to recruit new staff because of the change.*

*We had agreed to revisit this request once personnel had returned from annual leave as we would have to discuss this request with them.*

*Karen made the decision to leave her position before we had the opportunity to discuss with our personnel and to try to recruit.*

*We are a people based organisation where people are our most valuable asset, our success is dependent on our personnel interacting with each other and our customers.*

5 *We make it easy for them to book their holiday or annual leave by email or in person.*

*Our personnel create the recommendations, sales and create returning customers, Karen was a part of this too, we did not dismiss Karen we had no reason to, nor did we create an environment where Karen had to raise any issues or grievances.*

10 *Karen made the decision not to wait until we had the opportunity to plan the variation to her working hours, she advised us on 27th May 2022 that she would not work any further Sundays from 29th May 2022.*

15 *On 30th May 2022 we offered Karen the opportunity to retract her position if she had had a change of heart over the weekend and to meet with us, we received no response and the claimant contacted Acas on 1st June 2022.”*

### **Reserved Judgment**

77. By letter from the Tribunal clerk to both parties' representatives, sent on 3 July 2023, they were informed that their written closing submissions had been passed to the Judge, and that the Tribunal's reserved written judgment with reasons would follow in due course, once the Judge had the opportunity to reflect, in chambers, on the evidence led over 3 days, and both parties' closing submissions.

20

78. Unfortunately, and for the reasons already provided earlier in these Reasons, that process has taken much longer than expected, for which I again offer my apology to both parties.

25

### **Issues before the Tribunal**

79. The case called before the Tribunal for full disposal, including remedy if appropriate. The finalised issues for determination was, as per the List of

Issues, as set by the Judge, and the full terms of which I reproduce later in these Reasons, when deliberating and discussing parties' competing answers to the listed issues.

### Relevant Law

5 80. While the Tribunal received written closing submissions from each of Mr Campbell for the claimant, and Ms Tomlinson for the respondents, both being lay representatives, their submissions understandably did not include any statutory provisions recite, nor any case law references provided, so the Judge has required to give himself a self-direction on the relevant law to cover  
10 all aspects of the case before this Tribunal.

81. An employee has a right not to be unfairly dismissed by their employer – **Section 94 of the Employment Rights Act 1996**. In terms of **Section 95(1)(c)** , an employee is dismissed by their employer if the employee terminates the contract under which they are employed (with or without notice) in  
15 circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct. The claimant, having more than 2 years' continuous employment with the respondents, is not excluded from the right, under **Section 108**.

82. In respect of that complaint of unfair, constructive dismissal, her complaint  
20 before the Tribunal proceeds as a complaint under **Section 111**. Her complaint of failure to pay notice pay proceeds as a complaint under **Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994**, as a claim for damages arising out of the termination of her employment, while her complaint about failure to pay holiday pay proceeds as a complaint under  
25 the **Working Time Regulations 1998**.

### Discussion and Deliberation

83. This case principally concerns a complaint of alleged, unfair constructive dismissal, brought by the claimant, against the respondents, as her former employer. She seeks an award of compensation from the respondents, in the

event of success with her claim, and she seeks a statutory uplift in any compensatory award on the basis of the respondents' alleged unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

5 84. Although not clarified in advance of the start of this Final Hearing, other than being included in the claimant's schedule of loss, seeking a 25% uplift, the factual and legal basis for that uplift was not foreshadowed in the ET1 claim form, nor in the schedule of loss, so the Judge required to clarify matters with the claimant's representative.

10 85. Having been allowed to borrow the bench copy of **Butterworths' Employment Law Handbook**, and referred by the Judge to the relevant pages setting forth the full terms of the ACAS Code of Practice (2015), Mr Campbell, the claimant's representative, after an adjournment granted by the Tribunal for him to consider the matter, and take instructions from his wife as  
15 the claimant, handed up a handwritten piece of paper reproducing section 4.7 from the **Butterworths** reprint of the ACAS Guide (2020), rather than identifying paragraph from the ACAS Code itself with which the claimant felt the respondents had unreasonably failed to comply.

20 86. Mr Campbell had copied from section 4.7 of the **Butterworths** content what is part of that Guide by ACAS designed to supplement the statutory guidance provided by the Code of Practice, but that Guide has no statutory force, but provides detailed guidance as to the application of the ACAS Code of Practice. In particular, he asked to Tribunal to note the following extract:

25 *"The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for employment tribunals to decide. However, the core principles are set out in the Acas Code of Practice."*

30 87. After further consideration, during a further adjournment granted by the Tribunal, Mr Campbell handed up a further handwritten piece of paper,



reproducing from sections 4.3(2), 4.4 (5), and 4.5(32) from the ACAS Code, as reproduced in **Butterworths**, being a reference to the full terms of paragraphs 2, 5 and 32 from the ACAS Code, providing as follows:

*“Introduction*

- 5           2. *Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help*
- 10           *employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.*

*Discipline: Keys to handling disciplinary issues in the workplace*

*Establish the facts of each case*

- 15           5. *It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary*
- 20           *hearing.*

*Grievance: Keys to handling grievances in the workplace*

*Let the employer know the nature of the grievance*

- 25           32. *If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.”*

88. The respondents’ position, in defence of the claim raised against them, was set out in their ET3 response, including the following arguments:

- “10. *It is denied that the Claimant was unfairly dismissed in the manner alleged or at all. The Claimant was not dismissed from her employment. She resigned without giving notice and advised the Respondent that.*
- 5 11. *There was no redundancy situation relating to the Claimant’s role. Accordingly, the Claimant does not have an entitlement to a redundancy payment.*
- 10 12. *The Claimant received payment for 4.5 hours accrued but untaken annual leave which was her entitlement at the date of termination of employment. The Respondent’s leave year uses the calendar year. The Claimant does not have an entitlement to payment in lieu of annual leave for the full holiday year for the period after termination of employment she has claimed. In the circumstances, it is denied that the Respondent made any unlawful deduction from the Claimant’s wages as alleged or at all.*
- 15 13. *The Claimant resigned on 27 May 2022 with immediate effect. It is denied that the Respondent’s treatment of the Claimant amounted to a breach of any express or implied terms of the Claimant’s contract of employment.*
- 20 14. *If, which is denied, the tribunal finds that there was such a breach, the Respondent contends that the breach was not sufficiently serious as to constitute a repudiatory breach giving rise to an entitlement to treat the contract as terminated with immediate effect.*
- 25 15. *If, which is denied, it is found that the Claimant was entitled to terminate the contract without notice by reason of the Respondent’s conduct, the Respondent will argue that the dismissal was fair having regard to section 98(4) of the Employment Rights Act 1996.*
16. *The Claimant did not raise a grievance in relation to the incident and unreasonably failed to follow the Acas Code of Practice on Disciplinary*

*and Grievance Procedures not submitting an appeal against any dismissal.*

17. *Further and in the alternative if, which is denied, a Tribunal finds that the dismissal was unfair, any compensation awarded should be reduced by up to 100% to reflect the Claimant's contributory conduct."*

5

89. In carefully reviewing the evidence led in this case, and making my findings in fact, and then applying the relevant law to those facts, I have had to consider the each of the claimants' various heads of claim against the respondents.

10 90. Accordingly, I move onwards now to look at each of the issues before the Tribunal for judicial determination, looking, in turn, at each of them, having regard to each party's stated position in their written closing submissions, and then my own determination on the individual issues.

15 91. Having dealt with Ms Knox's witness statement, item A in the List of Issues before the Tribunal, already dealt with earlier in these Reasons, I now address the others individually, as follows, reproducing the full text from the List of Issues, shown in bold, for ease of reference, and then followed by each party's position, with my own determination thereafter, as follows:

**B. Unfair (constructive) dismissal**

20 *The Tribunal will need to decide:*

**1. What was the effective date of termination of the claimant's employment with the respondents?**

92. In reply, the claimant's position is that the effective date of termination was 30 May 2022.

25 93. For the respondents, it is stated that the effective date of termination was 27 May 2022 when the claimant resigned from her employment.

94. The Tribunal has decided that the effective date of termination was 27 May 2022, when the claimant having attended at the workplace, did not work, but

handed the respondents' keys back to Norma McTaggart, and confirmed that she would not be returning to work.

**2. Was the claimant dismissed by the respondent, or did she resign? The Tribunal will need to decide which party terminated the contract?**

5 95. In reply, the claimant's position is that she was dismissed by the respondents' Jacqueline Tomlinson, that she did not resign, and "***it is important to stipulate that I had no employment contract for referral.***"

96. For the respondents, it is stated that the claimant resigned from her employment with immediate effect when she attended at the respondent's premises on 27 May 2022 and confirmed that she would not be returning to work. She handed over her keys to the premises at that time. Jacqueline Tomlinson tried to call the claimant to discuss her resignation further but the claimant did not answer, nor return the call. Further attempts by Jacqueline Tomlinson to contact the claimant by phone were met with no response.

15 97. Further, on Monday 30 May 2022 Jacqueline Tomlinson acknowledged the claimant's resignation in an email sent to the claimant's normal email address and confirmed the arrangements for her final pay. The claimant responded by email on the same date stating that she had not resigned and had been unfairly dismissed whilst she was ill. She sought a redundancy payment from the respondent. No request was made by the claimant to clear up any confusion regarding her intention, nor was there a request to be re-instated.

98. Jacqueline Tomlinson confirmed in evidence that she sent a further email to the claimant on 30 May 2022 (at page 51) setting out a detailed account of her understanding of events leading to resignation. That email was also sent to the claimant by Royal Mail on 30 May 2022 (page 54 and 55). That letter also set out "***We fully understand that you may have had a change of heart over the weekend and would like to retract your resignation. We would be happy to meet with you this week to discuss options, this can be arranged out of the store, and in the office or out with the office if it is your preference or over the telephone.***" No response to the email or

letter was received by the claimant. The claimant stated in evidence that she was too unwell to contact the respondent but she did confirm that she was well enough to contact ACAS on 1st June 2022.

5 99. The Tribunal has decided that the claimant voluntarily resigned from her employment on 27 May 2022, her resignation being accepted by the respondents on 30 May 2022, and that she was not dismissed by the respondents.

**3. Did the respondent breach the claimant's contract of employment with them by issuing her with a P45 and final payslip on 30 May 2022?**

10

100. In reply, the claimant's position is that she had no contract whilst in employment at No5A Interiors, and therefore no documents or terms of conditions to refer to, and that it was unreasonable to issue an employee with a P45 and final payment when their doctor had deemed them unfit for work.

15 101. For the respondents, it is stated that they did not breach the claimant's contract of employment by issuing her P45 and final payslip on 30 May 2022. The documents were issued in response to the claimant's resignation.

102. The Tribunal has decided that the respondents did not breach the claimant's contract of employment by issuing her P45 and final payslip on 30 May 2022, as those documents were issued in response to the claimant's resignation on  
20 27 May 2022.

103. Further, the Tribunal is satisfied, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, and the subsequent contract of employment.

25 **4. If so, did that breach the implied term of trust and confidence between employer and employee? The Tribunal will need to decide: whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and**

***the respondent; and whether it had reasonable and proper cause for doing so.***

104. In reply, the claimant's position is that the respondents did breach the terms of trust between employee and employer, and it is stated that the claimant  
5 does feel that the respondents behaved in a way that was calculated, as Ms Tomlinson was quick to make a decision based on hearsay with no witness to back up her claim and showed a lack of duty of care.

105. For the respondents, it is stated that the respondent did not breach the implied term of trust and confidence between employer and employee in any way.  
10 The claimant resigned and the respondent therefore had reasonable and proper cause to provide her P45 and final payslip because of that.

106. The Tribunal has decided that the respondents did not breach the implied term of trust and confidence between employer and employee, and that the  
15 claimant having resigned on 27 May 2022, Ms Tomlinson had reasonable and proper cause to provide the claimant with her P45 and final payslip because of that resignation.

***5. Is any breach of an express term of the claimant's contract of employment alleged? If so, which express term?***

107. In reply, the claimant's position is that she had no verbal or written agreements  
20 relating to her employment contract.

108. For the respondents, it is stated that the respondent did not breach any express term in the claimant's contract of employment. The claimant has not pointed to any express term that may have been breached during her evidence.

25 109. The Tribunal has decided that the claimant has not proved that there was any breach of any express term of her contract. Further, the Tribunal is satisfied, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, and the subsequent contract

of employment, the latter referring to disciplinary and grievance procedures in a staff handbook.

**6. Was any breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.**

5

110. In reply, the claimant's position is that there was an actual breach of contract from Jacqueline Tomlinson, as she had no contract for referral.

10

111. For the respondents, it is stated that the respondent's position is that there was no breach of contract at all, whether that is an implied or express term. If there was found to be any breach of contract then it was not so fundamental that it was sufficiently serious enough for the claimant to resign in response to.

15

112. The Tribunal has decided that there was no breach of contract, express or implied. Further, the Tribunal is satisfied, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, and the subsequent contract of employment.

**7. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.**

20

113. In reply, the claimant's position is that she did not resign, she was dismissed.

25

114. For the respondents, it is stated that the claimant did not resign as a result of any alleged breach of contract. She resigned because she didn't want to work on Sunday 29 May 2022. The email from Jacqueline Tomlinson to the claimant of 27 May 2022 (page 48) confirmed that her annual leave request for that date had been refused and the reasons for that being there was no colleague to cover.

115. The Tribunal has decided that the claimant did not resign as a result of any alleged breach of contract by the respondents, but she resigned because she

did not want to work on any Sundays from 29 May 2022, and the respondents had not approved her request for a variation of her contractual rota. It was the claimant's decision to leave the respondents' employment by resignation at that time.

5 **8. *Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.***

116. In reply, the claimant's position is that: "***No Contract was by myself received or viewed.***"

10 117. For the respondents, it is stated that the claimant did not raise any breaches of contract or grievances during her period of employment.

118. On the evidence available to the Tribunal, there is no basis for the claimant saying that no contract was received or viewed by her. The Tribunal is satisfied, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, the subsequent  
15 contract of employment, and the furlough agreement.

119. The Tribunal has decided that the claimant did not raise any breach of contract during her period of employment, nor did she raise any formal grievance in terms of the respondents' grievance procedure.

20 120. That said, and having regard to the **ACAS Code of Practice on Disciplinary and Grievance Procedures**, paragraph 1, grievances are "***concerns, problems or complaints that employees raise with their employees.***"

121. The claimant raising her concerns about her rota pattern with Mr Crossan and Ms Tomlinson, informally, and before her email of 27 May 2022 at 08:41 (page  
25 47 of the Joint Bundle) are grievances. She received a prompt response from Ms Tomlinson at 09:34 that same day (page 48).

122. What does not appear to have happened in this case is that the claimant exercised her statutory right to request a change in her terms and conditions



of employment, in particular the times when she was required to work, by making an application to the employer under **Section 80F of the Employment Rights Act 1996** related to flexible working.

5 **9. If the claimant was dismissed by the respondent, what was the respondent's reason or principal reason for dismissal?**

123. In reply, the claimant's position is that: ***"Jacqueline Tomlinson claims that Norma McTaggart told her that I was not coming to work. This alleged statement is untrue and based on hearsay. Norma McTaggart was not called up as a witness to back up Jacqueline Tomlinson's statement."***

10

124. For the respondents, it is stated that the respondent's position is that the claimant was not dismissed and that she resigned from her employment. The claimant's colleague was on annual leave at that time and there was no cover for her work so the respondent would not have dismissed the claimant. If it is found that the claimant was dismissed then the respondent position is that the dismissal was fair as she refused to attend at work.

15

125. The Tribunal has decided that the claimant was not dismissed, but she resigned.

**10. Was it a potentially fair reason?**

20 126. In reply, the claimant's position is that: ***"No. it was an unfair dismissal."***

127. For the respondents, it is stated that, in the event that the claimant was dismissed, then this was potentially fair reason for dismissal, namely, her conduct and some other substantial reason given that she had refused to attend at work because her annual leave request for Sunday 29<sup>th</sup> May 2023 was rejected.

25

128. The Tribunal has decided that there was no dismissal, as the claimant resigned. Had she not resigned, as she failed to attend for work on 3 rostered days, the employer could have taken disciplinary action against her, up to and

including dismissal, but that situation did not arise, as the respondents accepted the resignation.

**11. Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?**

5 129. In reply, the claimant's position is that: "***The Respondent's actions towards me were unreasonable and being unwell did not justify my dismissal.***"

130. For the respondents, it is stated that the respondent acted reasonably in treating the claimant's refusal to attend at work as a sufficient reason for dismissal.

10 131. The Tribunal has decided the claimant resigned, she was not dismissed. As she failed to attend for work on 3 rostered days, she could have been disciplined by the respondents for failure to attend. Had she not resigned, the employer could have taken disciplinary action against her, up to and including dismissal, but that situation did not arise, as the respondents accepted the  
15 resignation.

132. As regards the claimant being unwell, whilst the claimant emailed the respondents at 14:24 on 30 May 2022 (page 50 of the Joint Bundle) to say that her doctor had deemed her unfit for work, she did not provide the respondents with the fit note issued by her GP on that date (page 56), and  
20 that despite her earlier email to the respondents' Accounts at 09:13 that morning saying she had been diagnosed with a stress related illness, she was unable to work, and she would email and sent in the sickness certificate for 2 weeks. Neither it, nor two subsequent GP certificates, were produced to the Tribunal at the time, and only in the course of these Tribunal proceedings.

25 **C. Remedy for unfair dismissal**

***The claimant does not seek re-instatement, nor re-engagement. She seeks an award of compensation only from the respondents, if she was unfairly dismissed. In these circumstances:***

**1. What basic award is payable to the claimant, if any?**

133. In reply, the claimant's position is that the basic award payable to the claimant should be £684.00.

5 134. For the respondents, it is stated that the respondent does not dispute the basic award figure in the schedule of loss.

135. The Tribunal has decided that no basic award is payable to the claimant, as she was not unfairly dismissed by the respondents. She resigned.

**2. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?**

10 136. In reply, the claimant's position is that it would not be just and equitable to reduce the basic award.

137. For the respondents, it is stated that it would be just and equitable to reduce any compensation by 100% due to the claimant's contributory conduct before dismissal. This is because she attended at the office to advise that she was not returning to work. In addition, she did not return calls to Jacqueline Tomlinson, nor did she respond to the email from Jacqueline Tomlinson of 30 May 2022 or the letter of that same date offering to meet to clear up any possible confusion.

15 20 138. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

**3. If there is to be a compensatory award, how much should it be? The Tribunal will decide:**

**(a) What financial losses has the dismissal caused the claimant?**

25 139. In reply, the claimant's position is that the compensatory award should be 5 x £182.40 = £912.00.

140. For the respondents, it is stated that the claimant has not incurred any financial loss. The claimant confirmed in evidence that she was unfit to work in the period before commencing new employment and received employment allowance payments for that time. The lack of fitness for work is confirmed in the fit notes at pages 56 to 58. Jacqueline Tomlinson confirmed in evidence that the fit notes were not provided to the respondent until litigation was in contemplation.

141. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

**(b) What sum, if any, should be awarded for loss of statutory rights?**

142. In reply, the claimant's position is that £500 is due.

143. For the respondents, it is stated that no payment is applicable as the claimant resigned. If any award was to be made then this should be restricted to £300, this being the average sum awarded by Tribunal for this head of loss.

144. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration. Tribunals tend to award the equivalent of one weeks' wages for this head of compensation, so the claimant's quantum does seem high.

**(c) Has the claimant taken reasonable steps to mitigate her losses and replace her lost earnings, for example by looking for another job?**

145. In reply, the claimant's position is that she has done so.

146. For the respondents, it is stated that the claimant had another position with new employment within one month of her resignation.

147. The Tribunal has decided that the claimant secured new employment from 4 July 2022, so it cannot be held that she unreasonably failed to mitigate her losses.

148. In any event, the Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

**(d) *If not, for what period of loss should the claimant be compensated?***

5 149. In reply, the claimant's position is "n/a" (not applicable).

150. For the respondents, it is stated "none".

151. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

10 **(e) *Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?***

152. In reply, the claimant's position is that the answer here is "**No.**"

153. For the respondents, it is stated that they would have had a meeting to discuss the unauthorised absence.

15 154. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

155. That said, as the claimant failed to attend for work on 3 rostered days, she could have been disciplined by the respondents for failure to attend. Had she not resigned, the employer could have taken disciplinary action against her, up to and including dismissal, but that situation did not arise, as the respondents accepted the resignation.

20

156. Had she responded to Ms Tomlinson's email and letter of 30 May 2022, and explained her position, the Tribunal recognises that there was a possibility that there could have been a meeting with the claimant to discuss matters, but she did not respond to the employers' invitation for her to clarify, and perhaps seek to retract her resignation, if she had reconsidered over the weekend.

25

**(f) If so, should the claimant's compensation be reduced? By how much?**

157. In reply, the claimant's position is that it is "n/a" (not applicable).

158. For the respondents, it is stated that compensation should be reduced by 100% due to her contributory conduct as set out at C 2. above.

5 159. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

**(g) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? [Schedule A2 Trade Union & Labour Relations (Consolidation) Act 1992]**

10

160. In reply, the claimant's position is that that the answer here is "**No.**"

161. For the respondents, it is stated that the claimant failed to follow the ACAS Code on discipline and grievance as she could have raised a grievance regarding matters she suggested was unhappy with.

15 162. The Tribunal does not understand why the claimant has answered this question in the negative, when she seeks to have an uplift because of what she says is the respondents' unreasonable failure to comply with the Code.

163. Leaving that observation to the side, the Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned,  
20 she was not dismissed, and so no compensation for unfair dismissal arises for consideration. A statutory uplift / downlift only arises if the Tribunal makes a compensatory award for unfair dismissal.

**(h) Did the respondent or the claimant unreasonably fail to comply with it by? If so, what specific breach of the Code is alleged?**

25 164. In reply, the claimant's position is that the respondent was unreasonable and failed to comply with the ACAS Code.

165. For the respondents, it is stated that the claimant unreasonably failed to follow the ACAS Code as she didn't raise any grievance relating to any issues she was unhappy with and instead chose to resign with immediate effect.
166. While the claimant's closing submission does not cite the specific breaches of the Code alleged, the Tribunal has had regard to Mr Campbell's statement to the Tribunal, as recorded earlier in these Reasons.
167. Having done so, the Tribunal has decided that the claimant has failed to show that the respondents unreasonably failed to comply with the ACAS Code.
168. In any event, the Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration. A statutory uplift / downlift only arises if the Tribunal makes a compensatory award for unfair dismissal.
- 15 **(i) If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?**
169. In reply, the claimant's position is that it is just and equitable to increase the claimant's award by 25%.
170. For the respondents, it is stated that any award made to the claimant should be reduced by 25% to reflect the claimant's failure to submit a grievance.
- 20 171. The Tribunal has decided that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration. A statutory uplift / downlift only arises if the Tribunal makes a compensatory award for unfair dismissal.
- 25 **(j) If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?**

172. In reply, the claimant's position is that the answer to this question is in the negative, as the claimant did not contribute to dismissal by blameworthy conduct.

5 173. For the respondents, it is stated that the claimant did contribute to any dismissal. This is because she attended at the office to advise that she was not returning to work. In addition, she did not return calls to Jacqueline Tomlinson, nor did she respond to the email from Jacqueline Tomlinson of 30 May 2022 or the letter of that same date offering to meet to clear up any possible confusion.

10 174. The Tribunal has decided that that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

**(k) If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?**

15 175. In reply, the claimant's position is that the answer to this question is in the negative, as it would not be just and equitable to reduce the claimant's compensatory award.

176. For the respondents, it is stated that it would be just and equitable to reduce any compensatory award by 100% due to the claimant's actions (as detailed at j above).

20 177. The Tribunal has decided that that this question is superceded, as the Tribunal has decided the claimant resigned, she was not dismissed, and so no compensation for unfair dismissal arises for consideration.

#### **D. Notice pay**

25 **1. What was the claimant's notice period?**

178. In reply, the claimant's position is that 2 weeks' notice pay is due, as no employment contract was available.

179. For the respondents, it is stated that the notice period was 2 weeks.



180. The Tribunal has decided that as the claimant resigned, and she was not dismissed by the respondents, no notice pay is due to her. Had she been dismissed, the contract of employment, which the Tribunal is satisfied was issued, provides for 2 weeks' notice given her length of employment with the respondents.

**2. Was the claimant paid for that notice period?**

181. In reply, the claimant's position is that no payment was received.

182. For the respondents, it is stated that no notice pay was paid as the claimant resigned with immediate effect.

183. The Tribunal has decided that it is an agreed fact that no notice pay was paid. It also agrees that no notice pay was due as the claimant resigned with immediate effect on 27 May 2022.

**3. If not, was the claimant guilty of gross misconduct? or did the claimant do something so serious that the respondent was entitled to dismiss without notice?**

184. In reply, the claimant's position is that there was no gross misconduct or misdemeanours to justify dismissal.

185. For the respondents, it is stated that the claimant resigned with immediate effect in breach of her contract of employment and is not entitled to payment for that notice period.

186. The Tribunal has decided that as the claimant resigned with immediate effect in breach of her contract of employment, and the need for her to give the respondents 2 weeks' notice of termination, she is not entitled to payment for the notice period.

**4. What amount (if any) is due to the claimant for unpaid notice pay?**

187. In reply, the claimant's position is that she is due notice pay of £364.80.

188. For the respondents, it is stated that no payment for notice is due to the claimant as she resigned with immediate effect.

189. The Tribunal has decided that no payment for notice is due to the claimant as she resigned with immediate effect.

5 **E. Holiday Pay (Working Time Regulations 1998)**

**1. *Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when her employment ended?***

190. In reply, the claimant's position is that her final payment is disputed.

10 191. For the respondents, it is stated that all annual leave has been paid, and the claimant received 4.5 hours in her last pay.

192. The respondents' reply has to be viewed in context of their final pay / PAYE file note, produced at page 91 of the Joint Bundle, and the calculation set out in finding in fact (58).

15 193. Despite the confused and confusing documentary and oral evidence on this matter presented to the Final Hearing, by both parties, the Tribunal has decided that there was a failure to pay the claimant for annual leave the claimant had accrued but not taken when her employment with the respondents ended.

20 **2. *What was the claimant's leave year?***

194. In reply, the claimant's position is that the leave year was the calendar year 2022.

195. For the respondents, it is stated that it was the calendar year, 1 January to 31 December.

25 196. The Tribunal has decided that is an agreed fact that the leave year was the calendar year 1 January to 31 December 2022.

**3. How much of the leave year had passed when the claimant's employment ended?**

197. In reply, the claimant's position is that 5 months had passed.

198. For the respondents, it is stated that almost 5 months had expired.

5 199. The Tribunal has calculated that the period from 1 January 2022 to 27 May 2022 is 147 days, being 4 months, 27 days including the end date.

**4. How much leave had accrued for the year by that date?**

200. In reply, the claimant's position is that it was 55.3 hours.

201. For the respondents, it is stated that it was 53.8 hours.

10 202. Using the Gov.UK online holiday pay calculator to check statutory holiday pay entitlement, on the basis of 24 hours per week, worked over 5 days, gives an entitlement of 134.4 hours per annum. For somebody leaving part through the leave year, at 27 May 2022, the online calculator gives an entitlement of 54.2 hours. That is not the figure given by either party.

15 203. From the figures quoted by them, it seems the claimant has used 30 May 2022 as the end date, as the online calculator shows the statutory entitlement to that date is 55.3 hours holiday. The respondents' calculations seem to have used 26 May 2022 as the leaving date, as that date shows the statutory entitlement is 53.8 hours holiday.

20 **5. How much paid leave had the claimant taken in the year?**

204. In reply, the claimant's position is that it was 40 hours.

205. For the respondents, it is stated that it was 40 hours.

206. The Tribunal has decided that annual leave taken was 40 hours total, for the 8 dates shown on the respondents' final pay / PAYE file note, produced at  
25 page 91 of the Joint Bundle.

**6. Were any days carried over from previous holiday years?**

207. In reply, the claimant's position is that no annual leave was carried over.

208. For the respondents, it is stated that no annual leave was carried over.

209. The Tribunal has decided that it is an agreed fact that no annual leave was carried over from 2021.

5 **7. How many days remain unpaid?**

210. In reply, the claimant's position is that 10.5 hours remain unpaid.

211. For the respondents, it is stated "**None. – We offered during evidence if we were to not include the £73.05 overpayment deduction then that sum plus £5.80 would be due to the claimant.**"

10 212. The Tribunal has decided that as per the final pay / PAYE file note, produced by the respondents at page 91 of the Joint Bundle, and the calculation set out in finding in fact (58), show that 44.5 hours were paid, including 4.5 hours in the final pay, leaving 9.3 hours unpaid.

**8. What is the relevant daily rate of pay?**

15 213. In reply, the claimant's position is that it was £9.50 per hour.

214. For the respondents, it is stated that it was £9.50.

215. The Tribunal has decided, on the available evidence, that the claimant's hourly rate was £9.50.

**9. What amount (if any) is due to the claimant for unpaid holiday pay?**

20 216. In reply, the claimant's position is that £99.75 is due, being 10.5 hours at £9.50 per hour.

217. For the respondents, it is stated "None".

218. The Tribunal has decided that neither party is correct. Using the respondents' calculations, at page 91 of the Joint Bundle, where the claimant in her  
25 evidence agreed the dates and hours worked, and the dates and hours paid

for annual leave taken, that calculation shows that 9.3 hours were left unpaid, payable at £9.50 per hour, which would leave £88.35 due to the claimant.

219. The final pay slip, at page 92, was in agreed terms, and while the claimant says she was not advised of the 2020 overpayment at the time, she did not  
5 dispute that her January 2020 wages were paid at the wrong rate.

220. As the evidence available to the Tribunal shows, the claimant had an outstanding liability to the respondents for an overpayment from 2020, in the sum of £73.05, and the final salary paid for 11 hours, rather than 10, being a further overpayment of £9.50, leaving a balance due to the claimant of only  
10 £5.80. That therefore is the amount that the Tribunal orders the respondents to pay to the claimant.

**F. Failure to issue written statement of particulars of employment [Schedule 5 Employment Act 2002]**

1. *When these proceedings were begun, was the respondent in breach of  
15 its duty to give the claimant a written statement of employment particulars or of a change to those particulars?*

221. In reply, the claimant's position is that the respondent was in breach of duty to supply a written statement of employment particulars or any changes, and this would also include disciplinary or grievance procedures.

20 222. For the respondents, it is stated that the claimant was issued with a statement of particulars of employment. This document is at pages 29 to 40 of the bundle. That contract was referred to in a subsequent furlough agreement at pages 41 to 45. This variation to the contract of employment was understood and accepted by the claimant by email.

25 223. The Tribunal has decided that it is satisfied, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, the subsequent contract of employment, and the furlough agreement.

**2. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under Section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.**

5 224. In reply, the claimant's position is that there are no exceptional circumstances that would make it unjust or inequitable to make the minimum award.

225. For the respondents, it is stated that no exceptional circumstances exist, and the claimant has been provided with the statement.

10 226. The Tribunal has decided that it is satisfied, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, the subsequent contract of employment, and the furlough agreement. As such, no award arises for consideration by the Tribunal.

**3. Would it be just and equitable to award four weeks' pay?**

15 227. In reply, the claimant's position is that it would be just and equitable to accept 4 weeks' pay.

228. For the respondents, it is stated that it is not just and equitable to award 4 weeks' pay as the statement had been issued.

20 229. The Tribunal has decided that, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, the subsequent contract of employment, and the furlough agreement. As such, no award arises for consideration by the Tribunal.

**4. What amount (if any) is due to the claimant for any failure to issue written statement of particulars of employment ?**

25 230. In reply, the claimant's position is that the award should be between £456 and £912, being 2 to 4 weeks' pay, for failure to issue written statement of particulars of employment.

231. For the respondents, it is stated that no award is due to be paid.

232. The Tribunal has decided that, on the available evidence, that there was written documentation about the claimant's employment, in the initial offer letter, the subsequent contract of employment, and the furlough agreement. As such, no award arises for consideration by the Tribunal.

5 **Disposal**

233. The Tribunal finds the claimant's complaint of unfair, constructive dismissal by the respondents, and alleged breach of contract by the respondents' failure to pay her notice pay, to both be not well-founded, as the claimant voluntarily resigned from her employment, on 27 May 2022, her resignation being accepted by the respondents on 30 May 2022, and so she was not dismissed by the respondents, and so she had no entitlement to notice pay. Accordingly, those complaints against the respondents are dismissed by the Tribunal.

234. Further, the Tribunal finds the claimant's complaint against the respondents that she was not paid her outstanding holiday pay accrued to date of termination of employment to be established, and the respondents are ordered to pay to the claimant the sum of **£5.80**, which is the sum due, as per the respondents' final pay / PAYE file note, produced at page 91 of the Joint Bundle, and the calculation set out in finding in fact (58).

235. Finally, the Tribunal finds the claimant's other complaint against the respondents to be not well-founded, as the respondents did issue her with a written statement of employment particulars, being the contract of employment dated 13 January 2020, produced at pages 29 to 40 of the Joint Bundle. Accordingly, that complaint against the respondents is dismissed by the Tribunal.

25 236. **Employment Judge: I McPherson**  
237. **Date of Judgment: 6 November 2023**  
238. **Entered in register: 6 November 2023**  
239. **and copied to parties**

